In the Supreme Court of the United States

OCTOBER TERM, 1977

No. 77-987

C. JOHN FORGE, JR., JAMES OLSON,
RICHARD LARSON,
Appellants,

vs.

STATE OF MINNESOTA,
Appellee.

ON APPEAL FROM THE SUPREME COURT OF MINNESOTA

JOINT JURISDICTIONAL STATEMENT

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JOINT JURISDICTIONAL STATEMENT

Petitioner, C. John Forge, Jr. prays that the Supreme Court of the United States review the decision of the Supreme Court of the State of Minnesota entered on October 14, 1977 by the Court en banc in the case of:

STATE OF MINNESOTA	)	
VS.	)	No. 46,473
C. JOHN FORGE, JR.	)	

OPINION BELOW

The judgment of the Supreme Court of Minnesota affirmed the results but overruled the finding of fact and conclusion of law entered by the District Court of Cass County, Minnesota by upholding Section 97.431 Minnesota Revised Statutes. The District Court had found that the said statute was unconstitutional in that it deprived the

defendant of equal protection of the law and was an invidious racial classification under the 14th Amendment to the Constitution. The District Court however, found the defendant guilty of violating its provisions in order to preserve defendants' right of appeal under the terms of the settlement agreement incorporated by reference in the statute. The Court assessed a fine of $10.00 or 10 days in jail. The Supreme Court of Minnesota affirmed the conviction but on an entirely different basis ruled the enactment did not violate the federal or State Constitutions. The opinion and memorandum of the Cass County District Court is incorporated in the Appendix hereto as Appendix A at page 1a.

The opinion of the Supreme Court of Minnesota and its judgment has been issued in this case. The opinion has not yet been reported. A copy of the opinion rendered October 14, 1977 appears in Appendix B to this petition at page 84a.

JURISDICTION

The Judgment of the Supreme Court of Minnesota was entered on October 14, 1977.

The jurisdiction of this Court is invoked under Title 28, § 1257 (1) and (2) USC.

Appellants contended that 97.431 Minnesota Rev. Statutes violated among others the 14th Amendment to the United States Constitution and the decision was in favor of said statute's constitutionality.

Appellant further contended that said enactment violated Title 25, § 81 USC in that the agreement which required the enactment of 97.431 did not comply with the requirements of such federal statute and the Court

ruled such section did not apply to state enactments or agreements.

Appellant further contended that such agreement and enactment violated Article I, Section 8 of the United States Constitution in that it involved commerce between the State and an Indian Tribe but the Minnesota Supreme Court ruled such act done in settlement of a lawsuit was not violative of the area of law heretofore reserved to Congress.

97.431 Minnesota Revised Statutes can be found in Volume 8A at page 19 and reads as follows:

"A bill for an act

relating to natural resources; ratifying and affirming the settlement agreement arising from litigation concerning certain rights of the Chippewa Indians which are protected by treaty; prescribing the powers and duties of the commissioner of natural resources in relation to the settlement agreement; amending Minnesota Statutes 1971, Chapter 97, by adding a section,

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

Section 1. Minnesota Statutes 1971, Chapter 97, is amended by adding a section to read:

[97.431] [INDIAN RESERVATIONS: SPECIAL PROVISIONS RELATING TO HUNTING, FISHING, TRAPPING AND WILD RICING RIGHTS OF INDIANS.]

Subdivision 1. [PURPOSE] The purpose of this section is to give recognition and effect to the rights

of the Leech Lake Band of Chippewa Indians which are preserved by federal treaty and which relate to hunting, fishing, and trapping, and to the gathering of wild rice on the Leech Lake Indian reservation. These rights have been recognized and given effect by the decision of the United States District Court in the following entitled actions: Leech Lake Band of Chippewa Indians, et al. v. Robert L. Herbst, No. 3-69 Civ. 65; and United States of America v. State of Minnesota, No. 3-70 Civ. 228. The state of Minnesota desires to settle all outstanding issues and claims relating to the above rights.

Subd. 2 [DEFINITIONS]. For the purposes of this section the following terms have the meanings given them:

(a) "Band" means the Leech Lake Band of Chippewa Indians;

(b) "Committee" means the reservation business committee of the Leech Lake Band of Chippewa Indians:

(c) "Reservation" means the Leech Lake Indian reservation as described in the settlement agreement:

(d) "Settlement agreement" means the document entitled "Agreement and Settlement" on file and of record in the United States District Court for the District of Minnesota, Third Division, in the following entitled actions: Leech Lake Band of Chippewa Indians, et al. v. Robert L. Herbst, No. 3-69 Civ. 65; and United States of America v. State of Minnesota, No. 3-70 Civ. 228.

Subd. 3. (RATIFICATION OF SETTLEMENT AGREEMENT.)

Notwithstanding the provisions of any other law to the contrary, the state of Minnesota by this act ratifies and affirms the agreement set forth in the settlement agreement.

Subd. 4. (COMMISSIONER'S POWERS AND DUTIES.)

Notwithstanding the provisions of any other law to the contrary, the commissioner of natural resources, on behalf of the state of Minnesota, shall take all actions, by order or otherwise, which are necessary to carry out the duties and obligations of the state of Minnesota arising from the agreement entered into by the parties to the settlement agreement. These actions include but are not limited to the following:

(a) The implementation of the exemption of members of the band and other members of the Minnesota Chippewa tribe from state laws relating to hunting, fishing, trapping, the taking of minnows and other bait, and the gathering of wild rice while within the reservation, together with exemption from related possession and transportation laws, to the extent necessary to effectuate the terms of the settlement agreement;

(b) The establishment of a system of special licenses and related license fees for persons who are not members of the Minnesota Chippewa tribe for the privilege of hunting, fishing, trapping, or taking minnows and other bait, within the reservation. All money collected by the commissioner for special licenses shall be deposited in the State Treasury and credited to the Leech Lake Band special license ac-

count, which is hereby created. All money in the State Treasury credited to the Leech Lake Band special license account, less any deductions for administrative costs authorized by the terms of the settlement agreement, is appropriated to the commissioner who shall remit the money to the committee pursuant to the terms of the settlement agreement;

(c) To the extent necessary to effectuate the terms of the settlement agreement, the promulgation of regulations for the harvesting of wild rice within the reservation by non-Indians;

(d) To the extent necessary to effectuate the terms of the settlement agreement, the establishment of policies and procedures for the enforcement by conservation officers of the conservation code adopted by the band; and

(e) The arbitration of disputes arising under the terms of the settlement agreement.

Section 2. [EFFECTIVE DATE] This act is effective 60 days after final enactment. However, the commissioner of natural resources shall take such actions, before the effective date, as may be necessary to the administration of this act, and may promulgate orders before the effective date to take effect on the effective date."

The Commissioner's Order No. 1887 issued pursuant thereto reads as follows:

COMMISSIONER'S ORDER NO. 1887

REGULATIONS GOVERNING THE TAKING AND POSSESSION OF FISH FROM WATERS WITHIN THE BOUNDARY OF THE LEECH LAKE RESERVATION

Pursuant to authority vested in me by law, I, Robert L. Herbst, Commissioner of Natural Resources, hereby prescribe the following regulations for the taking and possession of fish from waters within the boundary of the Leech Lake Reservation.

Section 1. Definitions

a. "The Band" means the Leech Lake Band of Chippewa Indians.

b. "Band Member" means an Indian duly enrolled in the Band pursuant to the regulations of the Band of the Minnesota Chippewa Tribe.

c. "Tribal Member" means a duly enrolled member of the Minnesota Chippewa Tribe who is not a Band member.

d. "Restricted License" means a fishing license issued by the State of Minnesota and valid throughout the state, except within the boundaries of the Leech Lake Reservation.

e. "Unrestricted License" means a fishing license issued by the State of Minnesota and valid within the boundaries of the Leech Lake Reservation.

f. "Separate License Stamp" means a stamp which, when affixed to the Restricted License, is the equivalent of an Unrestricted License.

g. "R.B.C." means the Reservation Business Committee of the Leech Lake Band of Chippewa Indians.

Section 2. Every person, except one exempt by state law and a Band or Tribal member possessing a valid Band Fishing Identification Permit, shall possess a valid Unrestricted License to take fish within the boundary of the Leech Lake Reservation.

Section 3. For all persons, other than Band or Tribal members possessing a valid Band Fishing Identification Permit, the season, daily and possession limits for the taking of fish for non-commercial purposes shall be the same as the statewide regulations, with the exception of perch and whitefish which daily and possession limit shall be twenty-five (25) each.

Section 4. The taking of minnows and other bait for commercial purposes shall be the exclusive right of the Band, except that resort owners or bait dealers whose resorts or bait shops are within the boundaries of the Reservation may take minnows for resale at retail at their resorts or bait shops.

Dated at Saint Paul, Minnesota, this 7th day of June, 1973.

Robert L. Herbst
ROBERT L. HERBST
Commissioner of Natural Resources

Approved As to Form and Execution

WARREN SPANNAUS
Attorney General

/S/ .....
C. PAUL FARACI
Deputy Attorney General
Department of Natural Resources

The Settlement Agreement referred to in 97.431 Minnesota Revised Statutes can be found in Appendix C at page ..... hereof.

Article I, Section 8 of the Constitution reads as follows:

"Section 8, *POWERS OF CONGRESS*

The Congress shall have power to lay and collect taxes, duties, imports and excises, to pay the debts and provide for the common defense and general welfare of the United States; but all duties, imports and excises shall be uniform throughout the United States.

To borrow money on the credit of the United States.

To regulate commerce with foreign nations, and among the Several States, and with the Indian Tribes.

To establish a uniform Rule of Naturalization, and uniform Laws on the subject of Bankruptcies throughout the United States.

To coin Money, regulate the Value thereof, and of foreign Coin, and fix the Standard of Weights and measures.

To provide for the Punishment of counterfeiting the Securities and current Coin of the United States.

To establish Post Offices and post Roads.

To promote the Progress of Science and useful Arts, by securing for limited Times to Authors and Inventors the exclusive Right to their respective Writings and Discoveries.

To constitute tribunals inferior to the Supreme Court.

To define and punish Piracies and Felonies committed on the high seas, and Offenses against the Law of Nations.

To declare War, grant Letters of Marque and Reprisal, and make Rules concerning Captures on Land and Water.

To raise and support Armies, but no Appropriation of Money to that Use shall be for a longer Term than two years.

To provide and maintain a Navy.

To make Rules for the Government and Regulation of the land and naval forces.

To provide for calling forth the Militia to execute the Laws of the Union, suppress Insurrections and repel Invasions.

To provide for organizing, arming, and disciplining the Militia, and for governing such Part of them as may be employed in the Service of the United States, reserving to the States respectively, the Appointment of the Officers, and the Authority of training the Militia according to the discipline prescribed by Congress.

To exercise exclusive Legislation in all Cases whatsoever, over such District (not exceeding ten Miles squares) as may, by Cession of particular States, and the Acceptance of Congress, become the Seat of the Government of the United States, and to exercise like Authority over all Places purchased by the Consent of the Legislature of the State in which the Same shall be, for the Erection of Forts, Magazines, Arsenals, Dock-Yards, and other needful Buildings. And,

To make all laws which shall be necessary and proper for carrying into execution the Foregoing Powers, and all other Powers vested by this Constitution in the Government of the United States, or in any Department or Officer thereof."

The 14th Amendment to the Constitution reads as follows:

AMENDMENT XIV

Section 1. CITIZENSHIP—DUE PROCESS OF LAW —EQUAL PROTECTION.

"All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Section 2. REPRESENTATIVES—POWER TO REDUCE APPORTIONMENT.

Representatives shall be apportioned among the several States according to their respective numbers, counting the whole number of persons in each State, excluding Indians not taxed. But when the right to vote at any election for the choice of electors for President and Vice-President of the United States, Representatives in Congress, the Executive and Judicial Officers of a State, or the members of the Legislature thereof, is denied to any of the male inhabitants of such State, being twenty-one years of age, and citizens of the United States, or in any way

abridged, except for participation in rebellion, or other crime, the basis of representation therein shall be reduced in the proportion which the number of such male citizens shall bear to the whole number of male citizens twenty-one years of age in such State.

Section 3. DISQUALIFICATION TO HOLD OFFICE.

No person shall be a Senator or Representative in Congress, or elector of President and Vice-President, or hold any office, civil or military, under the United States, or under any State, who, having previously taken an oath, as a member of Congress, or as an officer of the United States, or as a member of any State Legislature, or as an executive or judicial officer of any State, to support the Constitution of the United States, shall have engaged in insurrection or rebellion against the same, or given aid or comfort to the enemies thereof. But Congress may, by a vote of two-thirds of each House, remove such disability.

Section 4. PUBLIC DEBT NOT TO BE QUESTIONED—DEBTS OF THE CONFEDERACY AND CLAIMS NOT TO BE PAID.

The validity of the public debt of the United States, authorized by law, including debts incurred for payment of pensions and bounties for services in suppressing insurrection or rebellion, shall not be questioned. But neither the United States nor any State shall assume or pay any debt or obligation incurred in aid of insurrection or rebellion against the United States, or any claim for the loss or emancipation of any slaves; but all such debts, obligations, and claims shall be held illegal and void.

Section 5. POWER TO ENFORCE AMENDMENT.

The Congress shall have power to enforce, by appropriate legislation, the provisions of this article."

Title 25, Section 81 United States Code reads as follows:

Section 81. CONTRACTS WITH INDIAN TRIBES OR INDIANS.

No agreement shall be made by any person with any tribe of Indians, or individual Indians not citizens of the United States, for the payment or delivery of any money or other thing of value, in present or in prospective, or for the granting or procuring of any privilege to him, or any other person in consideration of services for said Indians relative to their lands, or to any claims growing out of, or in reference to, annuities, installments, or other moneys, claims, demands, or thing, under laws or treaties with the United States, or official acts of any officers thereof, or in any way connected with or due from the United States, unless such contract or agreement be executed and approved as follows:

First. Such agreement shall be in writing, and a duplicate of it delivered to each party.

Second. It shall bear the approval of the Secretary of the Interior and the Commissioner of Indian Affairs indorsed upon it.

Third. It shall contain the names of all parties in interest, their residence and occupation; and if made with a tribe, by their tribal authorities, the scope of authority and the reason for exercising that authority, shall be given specifically.

Fourth. It shall state the time when and place where made the particular purpose for which made, the special thing or things to be done under it, and, if for the collection of money, the basis of the claim, the source from which it is to be collected, the disposition to be made of it when collected, the amount or rate per centum of the fee in all cases; and if any contingent matter or condition constitutes a part of the contract or agreement, it shall be specifically set forth.

Fifth. It shall have a fixed limited time to run, which shall be distinctly stated.

All contracts or agreements made in violation of this section shall be null and void, and all money or other thing of value paid to any person by any Indian or tribe, or anyone else, for or on his or their behalf, on account of such services, in excess of the amount approved by the commissioner and secretary for such services, may be recovered by suit in the name of the United States in any court of the United States, regardless of the amount in controversy; and one half thereof shall be paid to the person suing for the same, and the other half shall be paid into the Treasury for the use of the Indian or tribe by or for whom it was so paid.

(R.S. § 2103; Aug. 27, 1958, P.L. 85-770, 72 Stat. 927.)

Cases which support the appellant's right to appeal are:

Cohen v. *California,* (1971) 403 U.S. 15, 29 L.Ed.2d 284, 91 S.Ct. 26

Miedreick v. *Lauenstein,* (1914) 232 U.S. 236, 58 L.Ed. 584, 34 S.Ct. 309

Cessna v. *Tennessee,* (1918) 246 U.S. 289, 62 L.Ed. 720, 38 S.Ct. 306

Fiske v. *Kansas,* (1927) 274 U.S. 380, 71 L.Ed. 1108, 47 S.Ct. 655

Murray v. *Joe Gerrick & Co.,* (1934) 291 U.S. 315, 78 L.Ed. 821, 54 S.Ct. 432

Sage v. *Hampe,* (1914) 235 U.S. 99, 59 L.Ed. 147, 35 S.Ct. 94

Metlakatla Indian Community v. *Egan,* (1962) 369 U.S. 45, 7 L.Ed.2d 562, 82 S.Ct. 552

Weston v. *Charleston,* (1829) 27 U.S. 449, 7 L.Ed. 481

Huffman v. *Pursue Ltd.,* (1975) 420 U.S. 592, 43 L.Ed.2d 482, 95 S.Ct. 1200

QUESTIONS PRESENTED

(i) Does a state statute, which classifies residents of a State solely on the basis of origin and membership in a private organization, violate the equal protection clause of the Fourteenth Amendment to the Constitution?

(ii) Does a state statute, which uses the taxing authority of the state, assess a tax upon all of its citizens except those belonging to a certain small group determined on the basis of membership in a non-governmental unit and racial origin, and transfer the proceeds of such tax to such groups for their sole benefit and purpose, violate the equal protection clause of the Fourteenth Amendment to the Constitution?

(iii) Does a state have the right to contract with an Indian Band, in such a way as to require that non-members of the Band be licensed to fish, hunt or rice,

on state property or within a national forest in view of Article I, Section 8 of the Constitution?

(iv) Can a state use its police power to create a crime punishable by imprisonment and fine in order to settle litigation between Indians and the State against those who are not members of the Indian Band litigating the issue settled without violating the Equal Protection Clause of the Constitution?

STATEMENT OF THE FACTS OF THE CASE

C. John Forge, Jr., appellant herein, is a citizen of the United States and a resident of Jackson County, Missouri.

Appellant, James Olson, is a citizen of Minnesota residing in the Minneapolis metropolitan area, and owns a home on a lake located within the "Leech Lake Reservation."

Appellant, Richard Larson, is a citizen and resides in Cass County, Minnesota and owns property on Leech Lake at the Sucker Bay area.

On June 22, 1973 appellant, along with others, began to fish in an area of Leech Lake, Cass County, Minnesota called "Sucker Bay". The defendants possessed valid fishing licenses as required by Minnesota Statutes, the licenses however failed to bear the "Leech Lake Reservation" stamp as required by MSA 97.431. None of the defendants were either members of the Leech Lake Band of Chippewa Indians, nor the Minnesota Chippewa.

Defendants were arrested by officers of the Minnesota Conservation Department. They were tried by the Magistrate Court of Cass County, Minnesota. Conviction for

violation of MSA 97.431 is proscribed by MSA 97.603 which provides that a defendant convicted shall have committed a misdemeanor and be subject to a fine of not more than $500.00 and/or 90 days in jail. At the trial defendant appellant was fined $10.00 or 10 days. At the trial defendant moved for dismissal of the charges by reason that MSA 97.431 was in violation of the Fourteenth Amendment to the United States Constitution in that it denied to defendant equal protection of the laws and further that it violated the same provisions of the State Constitution. Upon the conviction the cause was duly appealed to the District Court of Cass County, Minnesota.

Trial was had in the District Court of Cass County, Minnesota upon a stipulated set of facts wherein defendants admitted fishing at the proscribed area of Leech Lake without a "Leech Lake Reservation" stamp as required by MSA 97.431 but moved for the dismissal of the charges again on the grounds that the enactment was unconstitutional for the following reasons:

First, that the State cannot enter into treaties, second, that the Minnesota law implementing the Agreement is void because it denied equal protection in violation of the Fourteenth Amendment of the United States Constitution. In addition, the defendants assert that Article IV, paragraph 33, as amended, of the Minnesota Constitution was violated by the enactment and finally that the agreement violated Article I, paragraph II of the Minnesota Constitution. On November 7, 1975 the Cass County District Court ruled:

> "As stated, the Court finds no treaty right to hunt and fish reserved to the Minnesota Chippewa Tribe at the Leech Lake Reservation. Thus, equal protection arguments must be determined solely on a rational

basis theory in order to comply with the Federal and State Equal Protection Provisions. MSA 97.431 clearly does not attempt to justify itself on any rational basis. It splits jurisdiction solely on the basis of race (and includes only some members of that race) and geographical area. It provides for different sets of laws and different courts for the various areas. It places a different tax on all races other than the Minnesota Chippewa with the benefit of that tax going only to the Minnesota Chippewa. It excludes all race from activities which only one race may take part in. As such, MSA 97.431 goes far beyond what any other statute, Federal or State, has ever done as to race relations."

In conclusion the trial court states:

"It is apparent that this memorandum does not support the Court's finding of guilt as to these defendants. The defendants presented this case to the Court as a test of the validity of MSA 94.431 (97.431), and the Court feels that the issues raised therein are of such an important and uncertain nature that appellate review is necessary. In order to achieve this review, a finding of guilt was made although the Court feels it is not justified, for neither the State or [nor] the defendants could appeal from a not guilty finding."

Upon the entry of the findings as outlined above the defendant appealed to the Minnesota Supreme Court upon the same issues and facts. After due hearing the Minnesota Supreme Court on October 14, 1977 affirmed the conviction of defendant in the following manner:

"Given the continued existence of Indian treaty rights to fish, hunt, trap, and gather wild rice at Leech Lake, we have little difficulty in finding that § (MSA)

97.431 is not violative of either state or Federal equal protection standards or the prohibition against special legislation contained in Minnesota Constitution 1974, Act 4 § 33."

The Court went on to say:

"Section 97.431 was enacted for the primary purpose of effecting a compromise between the Band, which claimed an exclusive right to take fish from Leech Lake, and the state, which argued on behalf of all Minnesota citizens that the Indians were not immune from fish and game laws."

The judgment of the Minnesota Supreme Court has been stayed pending appeal to the United States Supreme Court.

THE FEDERAL QUESTIONS PRESENTED ARE SUBSTANTIAL

(i) Federal Protection Questions Raised by MSA 97.431 Affect the Fundamental Questions Inherent Within the Fourteenth Amendment.

This Court recently ruled that the central purpose of the equal protection clause of the Fourteenth Amendment is the prevention of official conduct discriminatory for or against anyone on the basis of race. *Washington* v. *Davis*, (1976) 48 L.Ed.2d 597, 96 S.Ct. 2040.

This Court also stated that in order to decide whether a specific law violated the equal protection of the Fourteenth Amendment, the Courts must look for three specific items: first the character of the classification in question, second, individual interests affected by the classification, and third, the governmental interests asserted in support

of the classification. *Dunn* v. *Blumstein,* (1972) 405 U.S. 320, 31 L.Ed.2d 274, 92 S.Ct. 995.

The trial Court's memorandum in Appendix A, at pages 1a thru 8a accurately sets out the sequence of events leading up to the enactment of MSA 97.431; and will not be set out fully here. The ensuing contest of the constitutionality of MSA 97.431 was of course the direct result.

The Supreme Court of Minnesota which, in effect, reversed the trial court's analysis of MSA 97.431 and its constitutionality could be said to have done so on the following basis:

1. That the Minnesota Chippewa tribe retained continuing rights to hunt, fish and rice at Leech Lake.

2. That the classifications are not invidious.

3. That MSA 97.431 was a compromise to "preserve the valuable fishing resources found at Leech Lake while at the same time giving recognition to and compensation for historic treaty rights held by the Band." (Opinion Appendix B, p. 95a).

The approach used here by the state is unique to American Jurisprudence. It recognizes for the first time the right of a state to enter into agreements with a portion of its citizens (i.e. Indians) to use the sovereignty of that state, independent of the Congress of the United States, to assess the balance of the community of the State a tax or license, solely for the benefit of this citizen group (i.e. Indians), irrespective of the problem created by Article I, Section 8 of the Constitution.

While there exists little real question that the Federal Government has the right to treat Indians specially by legislation, this concept is rooted in the doctrine of guard-

ian and ward relationship. Such a relationship does not exist between the Indian and the State or if it does then this case will decide that issue.

The equal protection guaranteed by the Constitution forbids the State legislators from selecting persons, and imposing upon them burdens and liabilities which are not cast upon others similarly situated. *Atchison, T. & S.F. R.R. Co.* v. *Matthews,* 174 U.S. 96, 43 L.Ed. 909, 19 S.Ct. 609. While a state may engage constitutionally in classification of its citizens on a reasonable basis for legitimate state purposes, this does not extend beyond to entrenched national government prerogatives, such as dealing with the Indians and Indian lands. It can be said that state classifications alleged to be a denial of equal protection have more often than not been sustained, however, where the class drawn is based primarily on racial consideration the rule has been otherwise.

The classification used by MSA 97.431, of course, is not based upon solely distinction between Indians and non-Indians, it goes much further. It subdivides Indians into those of the Chippewa ancestry. But it does not stop there, it goes further by saying only those Chippewa who are members of the Minnesota Chippewa Tribe may hunt, fish and rice free from state regulation.

While this fact standing alone might not make the legislation invidious, the legislature went further, for this could be nothing more than a recognition of the status quo. However, MSA 97.431 goes further, it establishes a special state license, the cost of which is to be determined at the discretion of the Business Committee, not of the Minnesota Chippewa, but only of the Leech Lake Band. Nor does the license fee assessed go to the conservation purposes enumerated under Chapter 97 of the

Minnesota Statutes, nor to the Minnesota Chippewa, to whom whatever vestiges of treaty remaining belong, but solely to the Leech Lake Band without any restrictions upon its use.

Further, the Statute does not fully set out the totality of the law. Subsection 4 clearly states:

> "the commissioner of natural resources, on behalf of the State of Minnesota, shall take all actions, by order or otherwise, which are necessary to carry out the duties and obligations of the state of Minnesota arising from the agreement entered into by the parties to the settlement agreement. These actions *include but are not limited* to the following." (Thereafter 5 categories are enumerated)

The general provisions of Chapter 97 make the violation of any provision of that Chapter a misdemeanor. Thus, in reading the enactment one cannot clearly determine the full extent of conduct proscribed to non-Indians, nor can one ascertain the extent of the law.

Acts wherein persons engaged in the same conduct are subject to different restrictions, or are held entitled to different privileges under the same conditions have been held to violate the equal protections clause of the Constitution. *Soon Hing* v. *Crowley,* (1885) 113 U.S. 703, 28 L.Ed. 1145, 5 S.Ct. 730; *Hayes* v. *Missouri,* (1887) 120 U.S. 68, 30 L.Ed. 578, 7 S.Ct. 350.

The Supreme Court of Washington in the case of *Purse Seine Vessel Owners Association et al.* v. *Moos,* (July 1977, Wash. S.Ct. No. 43938) recently said:

> "It is unreasonable in a free society for courts to grant special rights in perpetuity to a class of citizens based solely on ancestral circumstances. It has proven

> disruptive to the peace of the state, unjust to its citizens, and contrary to promote equality."

It is hard to imagine classifications by states that are more directly related to those racial tensions than those in MSA 97.431. This Court has repeatedly stated that statutes which classify solely on the basis of race or racial considerations must be subjected to more exacting scrutiny regardless of subject matter; *Kramer* v. *Union Free School District,* (1969) 395 U.S. 621, 23 L.Ed.2d 583, 89 S.Ct. 1886; *McLaughlin* v. *Florida,* (1964) 374 U.S. 184, 13 L.Ed.2d 222, 85 S.Ct. 283; *Hunter* v. *Erickson,* (1969) 393 U.S. 385, 21 L.Ed.2d 616, 89 S.Ct. 557.

It is important to consider that while it can be argued that since the purpose and benefits of this statute appear to be beneficial to the minority Indians in the area, the approval of such enactments in Minnesota can become the precedent for discriminatory legislation elsewhere. Consistency in law, equality and justice require that the laws themselves must treat all citizens of a state equally, before demanding that man's relationship to man be on a basis of equality.

It should be obvious that the Constitution itself originally created a body of law which segregated the black from his society. Those distinctions have been difficult to erase over the 200 year span of our national existence. Segregation by law as contemplated by MSA 97.431 if approved by this court will embark this nation upon a no less serious error, which later generations will of necessity be required to repudiate, with no less social turmoil. This court must terminate such considerations in our law whenever and wherever they arise. Today's beneficent purposes are tomorrows tragedies.

Even the Minnesota Supreme Court recognized the fact, that absent a reservation in the area, the classification would be a denial of equal protection as was determined by the trial court. The Supreme Court's findings are thus based solely on its analysis in *State* v. *Jackson*, (1944) 16 N.W.2d 752 and the decision of the federal District Court in *Leech Lake Band of Chippewa Indians* v. *Herbst*, 334 F. Supp. 1001 (1971). These cases of course, failed to recognize the rule of law laid down by this court in *Rosebud* v. *Kniep*, (1977) 97 S.Ct. 1361. The Minnesota Courts further failed to recognize the Act of Congress of December 19, 1854 (10 Stat. 598), see Appendix D, which refutes the position of that court totally. The court's analysis of this statute is that custom and usage have repealed it, a most dangerous doctrine to say the least.

In sum and substance the question of equal protection must not be allowed to depend upon social considerations, or questionable legal theories. The cornerstone of this republic is this doctrine of the equality of man. Rationalizations which erode this basis can eventually erode our republic, and cannot be permitted. Whenever the exceptions become the rule it is clear that there no longer exists a rule. It is time this court firmly and forcefully reestablish this doctrine emphatically into our laws. State governments have and will continue to make exceptions to this doctrine so far as the human mind can conceive, until this court firmly and demonstrably sets clear and distinct limits upon the creation of exceptions to this rule.

(ii) Equal Protection Doctrine Inherently Includes the Prohibition Against a State Delegating Its Taxing Authority and Police Power to a Non-Governmental Unit.

There can be little question that the courts of the United States continue to provide a doctrine of sovereignty to Indian Tribes. While the Act of March 3, 1871, C 120, § 1 (16 Stat. 566, Title 25, Section 71), terminated the Indians' Treaty rights it has apparently had little effect upon some of the other incidences of sovereignty.

However, since the relationship of the Indian and the government is that of a guardian and ward, certainly the Indian has no right to act independently of the consent of the Federal guardian. *United States* v. *Blackfeet Tribe of Blackfeet Nation*, 364 F. Supp. 192.

Since that relationship is between the Congress of the United States and the Indian Tribes[1] it is apparent that the states have no right to transact business, negotiations, settlements or agreements with the tribes except those specifically authorized by Congress. Thus the right of a state to deal with the Indians is only that right which the Congress has delegated to it. Indians have been determined by both legislative act and judicial interpretation to be the wards of this nation, subject to the protection of the Congress of the United States and no other.

Neither the President, his cabinet nor any other official may contract or agree to conduct by Indians without the specific authority of the Congress.

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1. *In re Heff*, (1905) 197 U.S. 488, 49 L.Ed. 848, 25 S.Ct. 506; *United States ex rel. Lynn* v. *Hamilton*, 233 F. 685; *Jaegar* v. *United States*, 27 Ct. Cl. 278.

This doctrine is so ingrained in our laws that it really is without necessity of authority. However, this premise is true only insofar as it pertains to the federal government and the Indian. Thus a state cannot legislate or conduct itself toward its Indian citizens in any special manner. It must provide equal social service. *Acosta* v. *San Diego County*, 272 P.2d 92, states must allow full access to their court systems; *State ex rel. Iron Bear* v. *District Court*, 515 P.2d 1292, and Indians have the equal right to vote in state and county elections, *Little Bear* v. *State of South Dakota*, 518 F.2d 1253. That states may not distinguish between citizens on the basis of race, *Purse Seine Vessel Owners Association et al.* v. *Moos*, (July 77 Wash. S.Ct. No. 43938).

Thus a state in delegating its taxing or licensing authority to an Indian tribe, as in MSA 97.431, the state is denying its equal protection to its other citizens. MSA 97.431 not only allows the reservation business committee to determine the cost of a license within certain limits, it also equally allows them to access licenses against other Indians who are members of the Minnesota Chippewa Tribe[2] to whom the treaty protected rights belong.

Further the licensing system established by MSA 97.431 transfers to the R.B.C. of the reservation the license fees collected, less the cost of collection, without any limitations on its use or application.

The regulations (supra) further make it obvious that the failure to pay the added license cost is a criminal offense punishable as provided by MSA 97.431. It was thus that appellants have progressed to this juncture.

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2. See Section 22.03, Conservation Code Leech Lake Indian Reservation, December 21, 1972, adopted January 15, 1973.

While admittedly the present $1.00 assessment is not confiscatory, nor would the increase to the 50% provided in the agreement be overly burdensome, the amount of payment is not here the question. Rather the question is can a state use its taxing authority and police powers solely for the benefit of a portion of its citizens?

The separate courts established by MSA 97.431 are not established under the authority of the Congress of the United States but in fact under the delegated authority of a state enactment. The state set the boundaries of the Indian jurisdiction of its courts, it approved of its Conservation Code, it established the enforcement authority, it provided for the means of changes and delegated all of this without the consent of Congress or the authority of any law or treaty.

The opinion of the Supreme Court of Minnesota makes no pretense that the act is done under such authority but instead implies such authority from its own sovereignty. A most unique determination.

Assuming for one minute the correctness of such opinion, I beg the answer to what limits does this authority extend? Does it extend only to its Indian citizens or also to its Blacks, its Swedish, etc.? What are the limits on the territory it can delegate to private organizations? Certainly it has held that its constitution proscribes no limitation on this authority.

What about the other states? Do they likewise possess such authority equally with Minnesota, if so will their legislation be equally benign?

Further, if the state has the right to grant special privilege does it not equally have the right to special restraints?

What we are dealing with here is not the $1.00 license but the raw use of power without constraint or limit. While the Minnesota Supreme Court sees no inherent problems, future generations may very well be blighted by this exercise of divisiveness within the state.

Appellants at no time have conceded the existence of the reservation itself. Even though the decision in *Rosebud* v. *Kniep,* (1977) ..... U.S. ....., 97 S.Ct. 1361 had been decided before this decision, the Minnesota Supreme Court ignored its rationale. The existence or non-existence of the reservation has been decided insofar as the state is concerned by the agreement, nonetheless, a new and unique way of judicial creation of a heretofore non-existent reservation. Numerous cases previously held that the reservation had been ceded; *United States* v. *Minnesota,* 270 U.S. 181, 70 L.Ed. 539; *Pillager Band of Chippewa Indians of Minnesota* v. *U. S.,* 428 F.2d 1274; *Minnesota Chippewa Tribe* v. *U. S.,* 305 F.2d 960; *Chippewa Indians of Minnesota* v. *U. S.,* 301 U.S. 358, 81 L.Ed. 1156; *Wilbur* v. *U. S. ex rel. Cadrie,* 281 U.S. 206, 74 L.Ed. 809; *Minnesota* v. *Hitchcock,* 185 U.S. 373, 46 L.Ed. 954; *Johnson* v. *Gearlds,* 234 U.S. 422, 58 L.Ed. 1383 and others.

Yet in spite of all this the state re-established the reservation status by the agreement and the United States District Court in Minnesota entered its judgment in accordance therewith.

The federal Courts have long ago held that State Legislatures have no authority to authorize taxation in aid of private enterprises or objects even when there is no express Constitutional prohibition; *Cole* v. *City of La Grange,* (1884) 19 F. 871, affirmed, 113 U.S. 1, 5 S.Ct. 416, 28 L.Ed. 896; 84 C.J.S., *Taxation,* § 14, p. 64; 71 Am. Jur. 2d, *State & Local Taxation,* § 43, p. 372.

Even more true is where the proceeds of the tax are then donated to that private purpose without any attempt to have them applied for some public benefit.

CONCLUSION

It is difficult to imagine a more complex situation than the case at hand. A lower court finds that a state law is unconstitutional because it denies equal protection of the law, but finds the defendants guilty in order to have a higher court review. The higher court affirms the conviction but holds the statute constitutional. The statute in question creates by state agreement with a small band of Indians a reservation long ago ceded to the United States and upon which in large part exists a National Forest by Act of Congress. In addition it assesses a license fee for users other than the Indian Band and allows them to license other Indians. It directly passes on the revenue without restraint and provides for criminal sanctions against those who refuse to pay. It further and more dangerously creates a legal precedent at substantial odds with all prior decisions of the highest courts of the nation and the Supreme Courts of the other States. By precedent the exclusive right of Congress to legislate on Indian questions is transferred to the states. Over 200 years of legislation and judicial interpretation are erased and for what avowed purpose? To settle a spurious lawsuit. A most unique and confounding reason.

We submit that the problems presented by this case will ultimately be required to be determined by this Court. The sooner it is accomplished the less mischief will have occurred.

Respectfully submitted,
C. JOHN FORGE, JR.
Pro Se

APPENDIX

APPENDIX A

MEMORANDUM

I. HISTORY OF THIS CASE

This case concerns the right to hunt, fish, and gather wild rice by Indians and non-Indians within an area described as the Leech Lake Indian Reservation. This area contains 588,684 acres, ownership of which is generally as follows: approximately 295,000 acres constitute the federally owned Chippewa National Forest; approximately 177,000 acres are owned by the State of Minnesota and its political divisions; approximately 90,000 acres are owned by individuals in fee; and approximately 27,000 acres are Indian land of which approximately 13,000 acres are trust lands derived from allotments, and 14,000 acres are tribal lands which are derived from various conveyances from the Federal government, (see for example 25 USCA, Section 591) for acquisition by the Chippewa tribe. This area is a low income area economically dependent primarily on timber cutting, retail trade, and a tourist industry. As pointed out in Leech Lake Band of Chippewa Indians vs. Herbst, 334 Fed. Supple. 1001, 1971, many Indians (and in all likelihood many economically disadvantaged non-Indians) depend at least in part on hunting, fishing, and especially the harvesting of wild rice (which is both a sustenance and a cash crop, and to a lesser extent the trapping of fur-bearing animals (which is strictly a cash crop). The tourist trade, and to a lesser extent the retail trade of the area, is based primarily on the hunting of deer and small game within the area, and to a greater

extent on the excellent fishing provided by the three large lakes of the area those being Cass Lake, Lake Winnibigoshish, and Leech Lake. Over a period of many years large numbers of resorts, campgrounds, motels, eating establishments, and marinas have been built to accommodate this tourist trade. Many recreational homes and permanent homes of area Indians and non-Indians have been built on the shores of lakes to avail the owners of the advantages of angling and hunting within this area. This is an area dependent to a great extent upon the gifts of nature, those being timber, fur, wild rice, fish, game, and forests.

The background of this case necessitates a brief history of the right of Indians to hunt and fish in this area since 1969. In that year the Leech Lake Band of Chippewa Indians, which is part of the consolidated Minnesota Chippewa Tribe, brought suit against the State of Minnesota to enjoin the enforcement of Minnesota game and fish laws within the boundaries of the Leech Lake Reservation. The Leech Lake Band asserted that they have the exclusive right by treaty to hunt and fish without interference from state regulation and to control all hunting and fishing within this area. The State of Minnesota contended that although the tribe at one time may have had a right to hunt and fish this area free of state control, that right was extinguished by a series of treaties between the Federal government and the Chippewa Indians. That case (Leech Lake Band of Chippewa Indians vs. Herbst, supra, hereinafter referred to as Leech Lake No. 1) resulted in a decision which held that the tribe had a right to hunt and fish without state interference, but that the right was non-exclusive. The State of Minnesota was enjoined from enforcing its game and fish laws as to the tribe and its members.

This decision resulted in great concern by large numbers of non-Indian residents of the area, property owners, and sportsmen living inside and outside of the area. The reason for the concern among sportsmen was that unrestricted hunting and fishing by the Indians (especially, possible commercial fishing) would in effect, ruin the regulated hunting and fishing by non-Indians. As a further result area residents feared loss of tourist trade, and loss of property value on lakeshore property. In addition non-Indian regulated rights to trap fur, harvest wild rice, fish and hunt were thought to be of little value to economically disadvantaged non-Indians, when the tribe was not regulated.

Both the State of Minnesota and the Leech Lake Band filed Notice of Appeal as to Leech Lake No. 1. The State was seeking to overturn the District Court decision. The tribe was seeking to get an exclusive right to the hunting and fishing. While appeals were being readied the tribe and the State of Minnesota entered into negotiations to settle the dispute. The result of the negotiation was the enactment of M.S.A. 97.431, as amended, by the 1971 Minnesota State Legislature. This statute contained the following provisions. First, it recognized an Indian treaty right to hunt, fish, trap, and harvest wild rice free from State regulation on the Leech Lake Reservation and sought to settle those claims (subd. 1). Second, it defined the band, committee, reservation, and settlement agreement. Third, it stated that Minnesota ratifies and affirms the settlement agreements (subd. 3). Fourth, it empowers the Commissioner of Natural Resources of the State of Minnesota to exempt members of the tribe from Minnesota game, fish, rice, and trapping law (subd. 4-a), to implement a special fee for non-Indian licenses to be used within the Reservation for taking of fish, hunting, trapping, or taking minnows, the proceeds of this fee being

credited to the tribe (subd. 4-b), to promulgate regulations as to wild rice by non-Indians as by the agreement (they must have a state and band license, subd. 4-c), that the State must enforce the code (tribal code as well as the State laws, as by the agreement, subd. 4-d), and for arbitration of disputes arising under the settlement (subd. 4-e). The commissioners' regulations implemented the above settlement agreement (see Appendix A) and detailed provisions for it. That agreement was signed by the Commissioner of Natural Resources for the State of Minnesota, the Governor of Minnesota, representatives of the tribe, and a U.S. Attorney on behalf of the United States. The settlement agreement itself (Appendix A) includes the following major provisions (described generally). The Indian Reservation is described for purposes of the agreement and the description includes several areas of water not heretofore included in the Reservation (Term 1). The agreement is conditioned on adoption by the legislature (Term 2). Only Congress can extinguish the rights involved (Term 3). All members of the tribe are exempt from State regulation within the Reservation as to fishing, hunting, wild ricing, and are instead subject to the tribal code, except that said tribal code shall not allow commercial hunting or fishing (Term 4-a). In return, the State shall collect a fee set by the tribe, but limited to ½ the state fee for non-Indian hunting and fishing rights within the Reservation which fee shall be turned over to the tribe (Term 4-b-1). As to wild rice, non-tribal members must buy both a Tribal license and a State license. The tribe must sell their license to both members and non-members. Control of hunting as to method and season is vested with the tribe and the commissioner must regulate as to non-members accordingly (Term 4-b-2). The band is granted an exclusive right to take non-game fish from within the Reservation for

commercial purposes (Term 4-b-3-a). Non-game fish taken for non-commercial purposes is limited to residents of Minnesota, and as to residents, no more than 25 White Fish (Term 4-b-3-b). Removal of minnows and other baits from the reservation waters for commercial sale becomes the exclusive right of the band, except that resorts and bait dealers within the Reservation may take for resale on the Reservation or may remove on payment of an additional fee (Term 4-b-4). The State is to enforce the code and the State law (Term 5). Any dispute between the State and the Tribe is to be arbitrated (Term 6). No assignment is allowed (Term 7) and no part of the agreement is severable (Term 8). This agreement was later amended and (or) clarified by an addition dated March 26, 1973 (Appendix B). This addition amended the agreement as follows. Term 1 stated that the agreement would end if Congress either ended the right to hunt and fish or a Federal Appellate Court or the United States Supreme Court held that there was no treaty right to hunt and fish in violation of the State law. Term 2 made it clear that the Tribe would have no jurisdiction over non-members, nor would the State have any jurisdiction as to Tribal members, as to game and fish law.

In conclusion M.S.A. 97.431 and the settlement and agreement did the following. It recognized an alleged treaty right of the Leech Lake Indians to hunt and fish. The alleged reservation boundary was changed to include some additional prime fishing and ricing water. An additional fee was to be charged to non-members and paid over to the tribe for their use for hunting, fishing, trapping, ricing, and bait acquisition. The members would enjoy the use of the natural resources under the regulation of the Tribal Code, and were not to be subject to State law. Enforcement of that code was to be by the State. Jurisdiction over code offenses was not to be in

the Tribal Court. Regulation of non-members would be in the State under State law. Jurisdiction over non-members remained with the State Courts. Regulation of wild ricing as to method and season was to be vested in the Tribe, but non-members were to rice under State and Band licenses. The Tribe agreed to limit the code to disallow commercial hunting and fishing by its members. The fees by non-members were limited to no more than ½ of the State fees. No part of the agreement was severable. The agreement to remain in effect until Congress ended it, or a Federal Circuit Court or the United States Supreme Court held that the Tribe did not have a treaty right to hunt and fish.

Continuing the history of this suit, the United States District Court (D. C. Minn.) accepted the agreement in the form of a Consent Judgment on June 18, 1973 (Appendix C). Since that time the original suit has been in limbo. The State and the Tribe have both implemented and based their actions on the agreement.

Prior to the entry of the Consent Judgment, a group called the Leech Lake Citizens' Committee was formed. This group sought to intervene in the Leech Lake No. 1 case on behalf of the State of Minnesota. It alleged that its members were being denied equal protection under the law in violation of Federal and State Constitution. It further alleged that the State could not make a treaty with an Indian tribe. Intervention by this group was denied by the District Court on March 28, 1973 (Leech Lake Citizens' Committee vs. Leech Lake Band of Chippewa Indians, 255 Fed. Supple. 697, D. C. Minn., 1973, hereinafter referred to as Leech Lake No. 2). Intervention was denied for several reasons. Several of those reasons were procedural and deemed of no importance to this case. Two of the stated reasons for dismissal as

to the merits should be noted. First, the District Court found that this was not an attempt by the State to make a treaty with the Indians, but instead was an agreement designed to bring an end to a lawsuit. Second, that the agreement did not deny equal protection under Federal or State Constitutions because neither the State nor the Federal Governments do violence to equal protection by honoring Indian treaties. In conclusion, the Court stated that the Citizens' Committee could seek redress in the State courts by a challenge to the validity of the State Statutes, if enacted.

The facts of the case presently before the Court show that Mr. Gordon A. Buchanan, Minnesota Conservation Officer, received an anonymous telephone call on June 22, 1973 (the first day that the non-Indian fishing license fee was required by the agreement) indicating a possible violation of Minnesota Law might be occurring at the Maple Leaf Resort on Sucker Bay of Leech Lake. He found the defendants in this case were fishing on a dock protruding into Leech Lake without the required Leech Lake Stamp. The facts of the arrest are not in dispute. The claims of the defendants are the same as used in Leech Lake No. 2. First, that the State cannot make a treaty. Second, that the Minnesota law implementing the Agreement is void because it denies equal protection in violation of the Fourteenth Amendment of the United States Constitution. In addition, the defendants assert that Article IV, Paragraph 33, as amended, of the Minnesota Constitution, is being violated. Finally, that the agreement violates Article I, Paragraph II, of the Minnesota State Constitution.

In summary it appears that the important aspects of this case are: first, we have Leech Lake No. 1 holding that the Leech Lake Tribe has a right to hunt and fish

within the alleged Reservation, free of State regulation. Then the agreement was made between the Tribe and the State of Minnesota. In the present case we have the defendants seeking to test the agreement and the Minnesota Statute implementing that agreement, in light of Federal and State equal protection standards and on Federal Pre-emption of Indian Affairs.

II. IMPLICATIONS OF THIS CASE AND OF THE TWO UNITED STATES DISTRICT COURT RULINGS (LEECH LAKE NO. 1 AND NO. 2).

The effect of the District Court's holding in Leech Lake No. 1 that in fact the Nelson Act of 1889, 50 Statutes At Large 642, 50th Congress Chapter 24, (hereinafter the Nelson Act) did not extinguish the Leech Lake Reservation and thus the Indian right to hunt and fish without State regulation, carries a number of implications for both the State and the Indians. Leech Lake No. 1, supra, recognized at least some of the possible implications when it stated, "Counsel represent that a decision here will affect the right of the Chippewa Tribe on White Earth, Nett Lake, Fond du Lac, Mille Lacs, and Grand Portage Reservation. Without getting deeply involved at this point in the Nelson Act, and without approaching questions which might apply to each Reservation after 1889, the exterior boundaries of those 6 reservations prior to the Nelson Act cover a large area of the State of Minnesota. The Leech Lake Reservation, as stated, covered approximately 590,000 acres, the White Earth Reservation approximately 790,000 acres, the Fond du Lac Reservation approximately 92,000 acres, the Nett Lake Reservation approximately 100,000 acres, the Mille Lacs Reservation approximately 61,000 acres, and approximately 50,000 acres at Grand Portage. Since all of these reservations either have streams or rivers running

through them, or lakes are contained within them, a total of at least 1,600,000 acres of an area containing generally good hunting and fishing, and economic reliance thereon, are in issue. Of course, the agreement and Minnesota Statute 97.431 only apply to the Leech Lake Reservation and the consolidated Minnesota Chippewa Tribe may not be inclined to accept such an agreement as to the other reservations.

It must also be noted that Leech Lake No. 1 may apply to more land area than was noted in the District Court opinion. Again not getting into post-1889 legal issues; included in the Nelson Act in addition to the cession of four sections of White Earth, Leech Lake, Nett Lake, Mille Lacs, Grand Portage, and Fond du Lac, was an area of 3,200,000 acres ceded by the Red Lake Band of Chippewa Indians. This area was treated by the Nelson Act in the same manner as the above Minnesota Chippewa Tribe Reservation. Because of a split between the Red Lake Tribe and the Minnesota Chippewa Tribe (see Chippewa Indians of Minnesota vs. The United States, 301 U.S. 358, 81 Lawyers' Edition, 1156, 1937) this area was not mentioned in Leech Lake No. 1. But as to whether the Indian right to hunt and fish was extinguished by the Nelson Act (again ignoring post-Nelson Act issues) Leech Lake No. 1 would be direct precedent. This Red Lake ceded area (Appendix D) would include another large lake, that being Lake of the Woods. Adding the Minnesota Chippewa Reservations and the Red Lake ceded area together we find that as to the Nelson Act extinguishing hunting and fishing rights, Leech Lake No. 1 may affect directly, a total of over 4,800,000 acres within the State of Minnesota. All of the large lakes within Minnesota or on the Minnesota border may be affected with the exception of Rainy Lake. Large lakes included

within the area which might be affected are the Minnesota portions of Lake Superior, Upper Red Lake, Lake of the Woods, Mille Lacs Lake, and all of Leech Lake and Lake Winnibigoshish. Thus the implications of Leech Lake No. 1 are great as to Minnesota hunting and fishing and the economy of the area directly affected thereby. (See Appendix E for total affected area).

The implications of Leech Lake No. 1 may not be limited solely to hunting and fishing rights. There are a number of possible legal questions which could result in the apparent holding of Leech Lake No. 1. No opinion as to these issues is intended for they could only be developed fully by cases directed toward those issues. These issues are mentioned only to show the magnitude of the State's interest in the Leech Lake No. 1 holding.

One of these potential issues is the question of Minnesota taxes being applied to Indians within any of the 4,800,000 acres of land. The Court does not wish to approach the subject of various kinds of taxes or even discuss the status of the Minnesota taxes (see Commissioner of Taxation vs. Brun, 174 NW (2) 120, 1970 for excellent summary of Minnesota taxes as to the unceded portion of the Red Lake Reservation) as to Indians except to note that we are not speaking merely of taxes on allotments any longer. Now we are speaking of taxes as to the entire reservation. The second area that might be mentioned, is the matter of criminal jurisdiction. Since the State of Minnesota was asserting criminal jurisdiction over all but allotments within these reservations since the Nelson Act, a holding that the reservations still exist would require a finding that the State in fact did not have jurisdiction. The problems caused by finding that the reservation still exists would be minimal as to the Minnesota

Chippewa because it is doubtful that many pre PL 280 (18 USCA 1162, granting Minnesota criminal jurisdiction over Minnesota Chippewa Reservation) prisoners still are in jail. However PL 280 does not apply to the Red Lake Reservation (18 USCA, 1162). Again no opinion is expressed as to the merits or the post-1889 law as to the Red Lake Reservation, but it is arguable that Minnesota has no criminal jurisdiction within the 3,200,000 acres' cession from the Red Lake Band. By virtue of the exception in PL 280 this problem would exist in every criminal conviction within this area as to Indians up to and including the date of this decision. A third area of possible future legal problem is land title. It might be necessary to reexamine the law and decisions affecting such areas as school trust lands, swamp land grants, and even private land sales. A fourth problem area is mineral rights. Based on recent discoveries, this area could become a major concern.

The above issues are mentioned only to show the various consequences of Leech Lake No. 1 as to the State of Minnesota and the Chippewa Indian Tribe. The Court does not mean to overstate the State's interest in that case nor does it wish to imply that those are the only possible consequences. The foregoing is mentioned only to show that the interests of both the State of Minnesota and the Chippewa Indian Tribe are very great. With all due respect to the United States District Court of Minnesota, this Court cannot, in absence of an Appellate Court decision, follow Leech Lake No. 1 and Leech Lake No. 2 without a complete examination of the problem on its own. Nor is it expected that the parties to Leech Lake No. 1, Leech Lake No. 2, or the present case will abide by this Court's decision without a higher Court's decision.

III. M.S.A. 97.431 AND THE SETTLEMENT AND AGREEMENT-CONSTITUTIONAL IMPLICATIONS

The Court is mindful of the ruling (Satiacum vs. The State of Washington, 38 Lawyer's Ed. (2) 1, 1973) which holds that all factual questions might be examined before addressing the question of whether a reservation still exists. There are two possible issues in this regard. The first is whether a dock is, as to hunting and fishing, within the jurisdiction of the Shore-Line authority or of the Water authority. If in this case it were the former, the Leech Lake Reservation went to the shore-line and included all land from the shore-line back in 1889. If it were the latter the Chippewa Reservation never did include this portion of water until a new Minnesota Chippewa agreement and therefore was under Minnesota jurisdiction. The second question is what is the legal effect of the damming of Leech Lake and the resulting diminishment of the size of the reservation prior to 1889. The answer to the first question is not clear. However fishing is directly related to the water and the Court would find it connected to the water authority. As to the second question Congress has the power to create the dam even though it might diminish the reservation. However since the answer to either of the above questions does not answer the basic question of whether M.S.A. 97.431 is constitutional or changed the issues as to that act, there is no point in pursuing the issues. No part of M.S.A. 97.431 is severable.

The first constitutional issue raised by the defendants is that the agreement and M.S.A. 97.431 are special legislation prohibited by Article IV, Paragraph 33, of the Minnesota State Constitution. The second issue presented is that the defendants, by enactment of M.S.A. 97.431 and

the agreement, are being denied equal protection under Article I, Paragraph II, of the Minnesota State Constitution. It makes little difference which of the above sections are in issue. What the defendants are claiming is that they pay an additional fee for State fishing licenses while the members of the Minnesota State Chippewa Tribe pay no fee to the State. The nature of the asserted right of the defendants is denial of equal protection. If indeed that right under Article I, Section 2, supra is being denied, then in all likelihood, Article IV, Section 33, supra is also being violated. The third section cited is the 14th Amendment, to the Constitution of the United States. This again is the Equal Protection Clause in the Federal Constitution. The standard of equal protection under Article I, Section 2, of the Minnesota Constitution is the same as the standard contained in Article XIV of the United States Constitution (Minnesota Federation of Teachers of Local 59 vs. Obermeyer, 147 NW (2) 358, 1966). Thus, although equal protection is provided in two Minnesota constitutional sections and the 14th amendment to the Federal Constitution, the standard for equal protection is the same. If M.S.A. 97.431 and the agreement violates any one of the sections, it must violate all three sections, and if it does not violate one of them it violates none.

Assuming for a moment that no treaty rights were involved in M.S.A. 97.431, the statute would almost certainly violate equal protection. Based solely on race and a certain geographical area one person pays a tax, another pays none but received the benefit of the special tax. Even more damning is the fact that within the same State two persons are subject to different jurisdictions on the same activity. As to that same activity the State legislature regulates one group's activity while the Tribe regulates another. The two groups go to different court systems.

One group is absolutely prohibited from some activities (commercial netting of non-game fish), while the other group can engage in that activity. To this Court's knowledge, split jurisdiction and special taxes based solely on race would be a new concept in the United States. It would violate equal protection.

Three possible theories exist upon which the above agreement might be found not to violate equal protection. The first is that the statute is based on a rational classification. This might include such factors as evidence of income of the Tribe on the Reservation. However, it is doubtful that any statute with jurisdiction over persons concerning the same activity could be upheld on a rational basis. It should be noted that it is clear from the fact of M.S.A. 97.431 that this act was not to rest on a rational basis, but rather to rest on Leech Lake No. 1, and treaty rights. The second basis on which this statute might be upheld is the Theory of Retrocession (see for example, Omaha Tribe of Nebraska vs. The Village of Walt Hill, 334 Fed. Supple. 823, affirmed 469 Fed. (2) 1327, certiorari denied, 409 U. S. 1107, 34 Lawyer's Ed. (2) 687, D. C. Nebraska 1971). Clearly, this was not the intent of the legislature. They were attempting to give recognition to a prior treaty right and were not trying to give the Chippewa a new right. In addition, there has never been any acceptance of retrocession by Congress.

The third and final reason that M.S.A. 97.431 could be upheld is that it merely recognizes the Indian rights by treaty. If in fact the Minnesota Chippewa Tribe has the right under treaties to hunt and fish within the boundaries of the Leech Lake Reservation, and if in fact the right has not been extinguished, then without question as stated in Leech Lake No. 1, Minnesota does no violence by honoring that Indian right. The reason is simple. If the

Indians retain the right, then only Congress can take it away. In the meantime it is a reserved right of the Chippewa, and the State of Minnesota never acquired jurisdiction over that right. The State of Minnesota can no more control that right than control hunting and fishing in Iowa. As to Federal Equal Protection, as stated in Leech Lake No. 1, citing Kills Crow vs. United States, the Indian and Federal relationship has always been recognized as one of guardian and ward and until that relationship is extinguished by treaty or act of Congress, there is no equal protection violation by recognition of those Indian rights. History shows that special Indian treaty rights which were different than non-Indian rights, were upheld or allowed as to land ownership, sale of such land, trust, leases of land, water rights, hunting and fishing rights, criminal jurisdiction, liquor laws, taxes, and far too many other areas to mention here. If the defendants, as appears by their brief, seek to have this Court find that Indian rights by treaty, are subject to state regulation based solely on equal protection, the defendants have come 200 years too late with 1/200 the amount of authority needed to support that position. The effect of a grant of citizenship to the Indians does not qualify or alter the above relationship (Puyallup Tribe vs. Department of Game, 391 U. S. 392, 20 Lawyers' Ed. (2) 689, at p. 693 through 94, 1968).

In conclusion this issue as to equal protection contains one single question, that being, does the Leech Lake Band of Chippewa Indians have an unextinguished right to hunt and fish on the Leech Lake Reservation? If they do, then M.S.A. 97.431 and the agreement cannot be attacked as to the reserved area by the present defendants on an equal protection ground, because in fact as to the treaty right, the defendants have no right to equal protection, rather only equal protection as to what the State has jurisdiction

over to protect. On the other hand if there is no treaty right to hunt and fish, then clearly M.S.A. 97.431 and the agreement do in fact violate equal protection of the Minnesota and Federal Constitutions. Leech Lake No. 1 said that such right does exist as to the Leech Lake Reservation. As previously stated, the Court will re-examine that decision in light of all information available.

IV. INTERPRETATION OF INDIAN TREATIES AND GENERAL RULES OF CONSTRUCTION.

Although each Indian treaty must be construed separately in light of its particular facts and circumstances, a number of general rules of construction have evolved. The following is a list of rules of construction which the Court feels need be considered in this case along with authority for each of those rules. These rules are loosely grouped into three types, those being what law applies; evidence of treaty intent; and various presumptions or burdens of proving the correct interpretation.

The first rule is that Indian treaties are to be interpreted by the use of Federal law (State vs. Jackson, 16 NW (2) 752, 1944). The federal law may refer back to state law as for example in cases concerning title to water beds (Donnally vs. U. S., 228 U.S. 243, 57 Lawyers' Ed. 820, 1913). A treaty and a statute are of the same weight (U. S. vs. Kagama, 118 U.S. 374, 30). An act of Congress can modify a treaty (Lone Wolf vs. Hitchcock, 187 U. S. 553, 47 Lawyer's Ed. 299, 1903) but there is a presumption that a later act does not conflict with an earlier treaty (Pigeon River Improvement Co. vs. Cox, 291 U. S. 138, 1934). Only Congress can extinguish a Reservation and a state may not (Oneida Indian Nation of New York State and all vs. The County of Oneida, New York And All, 39 Lawyer's Ed. (2) 73, 1974). A claim by a tribe for compensation for loss of a Reservation is res judicata as to whether the Reservation was ceded (United States vs. Southern Yute Tribe, 402 U. S. 159, 28 Lawyer's Ed. (2) 695, 1971).

The second group of rules of construction, concern evidence of treaty intent. Under this group the first rule is that if a treaty or act is ambiguous it is given a practical meaning (Pigeon River Improvement Co. vs. Cox, supra). The second rule which is perhaps another way of stating the first rule, is that a treaty is construed as the Indians understood it (Seuphert Brothers vs. U. S., 249 U. S. 194, 1919). The next rule is that a Court can look beyond the words of a treaty to find the true intent (Choctaw Nation of Indians vs. U. S., 318 U. S. 423, 87 Lawyer's Ed. 877, 1942). This includes looking at negotiations and the parties' construction of the treaty. Interior Department attitudes held for a long period of time after a treaty or act. Subsequent legislation is relevant but not determinative (Mattz vs. Arnett, 37 Lawyer's Ed. (2) 92, 1973). Evidence of how well suited an area was for Indians at the time of the treaty is also slightly relevant to determine whether a Reservation was continued (Mattz vs. Arnett, supra). Evidence of whether land was treated as public domain rather than Reservation is relevant to show whether a Reservation still exists (Northwestern Band of Shoshone Indians, 324 U. S. 334, 89 Lawyer's Ed. 985, 1945). Included in that category are school land grants, national forests, and public settlement by homestead.

The various presumptions on a treaty construction are as follows. First, a treaty is not a grant of rights to the Indians but rather, a grant of rights from them (U. S. vs. Winans, 198 U. S. 371, 49 Lawyer's Ed. 1089, 1905). Indian rights to hunt and fish will not be lightly abrogated (Menominee Tribe of Indians vs. U. S., 391 U. S. 404, 20

Lawyer's Ed. (2) 697, 1968). Indian treaties are to be construed as favorably as possible to the Indians (Peoria Tribe of Indians vs. U. S., 390 U. S. 468, 20 Lawyer's Ed. (2) 39, 1968). However, you cannot change a political question to a legal question or create a new intention, and construction must stop where the treaty stops (U. S. vs. Choctaw Nation, 179 U. S. 494, 45 Lawyer's Ed. 291, 1900). Nor can congressional injustice be corrected by treaty interpretation for that is for Congress to do (Northwestern Band of Shoshone Indians, supra, at p. 997-998).

In summary the law of interpretation of Indian treaties is federal law. The key fact is what the parties to the agreement intended to contract to do. Evidence as to the intent is to be admitted not on strict rules, but rather, if relevant as liberally as possible. If an agreement or treaty is unambiguous then the Courts cannot bury the meaning on moral or other grounds. If the language is ambiguous the treaty should not be construed against the Indians.

V. THE NATURE OF THE INDIAN RIGHT TO HUNT AND FISH

The right to hunt and fish can be grouped into three general types of treaty rights. The first of these is where a treaty or agreement specifically reserves a right to hunt and fish to the Indians. The classic cases in this area are the series of Puyallup Tribe cases of which, Department of Game and Fish of Washington vs. Puyallup Tribe, 38 L. Ed. (2) 254, 1973 is the most recent case. It is possible that such rights could be exclusive or as in the above case, it can be in common with non-Indians. The exact nature of the above right is not known at this time but it is known that the Indians have a right to take a portion of the fish to the extent that conservation is not impaired and the

non-Indians receive a portion for sport fishing. In other words a balance must be achieved between sport fishing, and a tribal right to take fish for Indian purposes, and conservation to protect both of the above areas. This is not the situation presented herein. No specific right to fish off the reservation is presented in this case.

The second type of right is the situation where an Indian Reservation remains. In this type of case it makes no difference whether the right to hunt and fish was mentioned in treaties or agreements. The right was a reserved one incident to the use of the land as Indian land. An example of this is, Opinion Acting Solicitor Interior Department M. 28107, June 30, 1936 holding that the Red Lake Chippewa Indians had an exclusive reserved right to hunt and fish within their Reservation (see also State vs. Jackson, supra, holding that the Minnesota Chippewa had the right to hunt and fish on the White Earth Reservation allotment). The reasoning behind this was that the ownership and occupancy of the land entitled the Indians to the use of the land. However the right to hunt and fish on reservations or Indian country did not run strictly on concepts of land ownership, but rather was based on areas of jurisdiction of the Federal government over Indians (Seymour vs. Superintendent, 368 U. S. 351, 7 L. Ed. (2) 346, 1962). If the Federal government retains jurisdiction over Indian country as defined by 18 U.S.C.A. 1151 then the right to hunt and fish remained. 18 USCA 1151 defined Indian country as: 1. All Indian reservations within the jurisdiction of the Federal government; 2. All dependent Indian communities within the U. S. or within or without a State in new or old territory; and 3. Indian allotments, still subject to Indian title. With the passage of the so-called PL 280 (18 USCA 1162) Federal jurisdiction was passed to the State as to most criminal acts. However by

Section B, hunting and fishing was exempted from passage to State control. Therefore, for lack of any better standards for determining whether hunting and fishing rights remain, in absence of expressed provision in a treaty, the question becomes, does the Federal government have jurisdiction under 18 USCA 1151. That question is answered by finding whether the area in question is included within 18 USCA 1151 Section A-C.

The third possibility is, the area is not Indian country nor is there a right in common off Indian country. Here the State has absolute jurisdiction inherent in the State's power over wildlife. If it were not for this third possibility, the Indian right to hunt and fish would extend to areas of the United States except where there is no longer a tribe or where a right is held in common as in the Puyallup Tribe situation. An example of this is U. S. vs. Pelican, 232 U. S. 442, 58 L. Ed. 676, 1913 where it was held that the north half of the Coleville Reservation had been vacated by the Indians except for allotments, and that as to the allotments the U. S. had jurisdiction, but as to the remainder they did not. The Supreme Court has held that off Indian country state regulation as to hunting and fishing do control (Organized Village of Kake vs. Egan, 369 U.S. 60, 7 L. Ed. (2) 573, 1962).

In summary the right to hunt and fish in the Indian way is a right held in common as between the tribes. It is a right treated in some aspects as a right which runs with the land, that is, the right to occupy. In some respects it is treated as an easement or servitude as in common situations. The right however, does not run by normal rules of property conveyance. It runs instead by whether the Federal government abandoned wardship over the Indians insofar as jurisdiction over the Indians is concerned for a certain land or water area. The reason for this is that

if Congress felt an Indian's interest in a particular area was no longer sufficient to exercise jurisdiction, then it, and the Indian's interest was no longer sufficient to prevent State regulation. It must be remembered that the states also have the right if not the duty to protect and conserve wildlife. This right cannot extend to treaty protected areas, but it does extend to all other areas. The result of the above is as follows. First, if the right is expressly reserved then the right, if not extinguished, remains. This is not the case here. If nothing is expressly said the question becomes, did the area in question remain Indian country by treaties and agreements? One additional fact ought to be mentioned. That is that for purposes of determining if a reservation still exists as to hunting and fishing rights, the Supreme Court has used as a sort of yardstick the north half of the Coleville Indian Reservation decision in the U. S. vs. Pelican case, supra and, as what is sufficient to extinguish a reservation, the south half of the Coleville Reservation represented by the Seymour vs. Superintendent case, supra. (See for example Mattz vs. Arnett, supra). As the District Court in Leech Lake No. 1 used this standard it shall be considered here.

VI. MINNESOTA CHIPPEWA TREATY HISTORY PRIOR TO THE NELSON ACT OF 1889.

There are a number of early treaties and executive orders concerning this era. As to the Leech Lake Reservation the first treaty needed to be considered between the United States and the present Minnesota Chippewa Tribe, is the treaty of February 22, 1855, Ten Statutes 1165, Kappler, Laws and Treaty, Vol. 2, pp. 685-90 (attached as Appendix F). The important provisions of the 1855 Treaty as to this case are as follows. Article I provided that the Mississippi Pillagers, and the Lake Winnibigoshish Bands of

Chippewa Indians "hereby cede, sell and convey to the United States all their right, title, and interest in, and to, the lands now owned by and claimed by them . . .". The land was then described as to boundaries (see Appendix G as to approximate amount ceded). Article II then set aside as reserved areas several reservations within the 1855 ceded area (see Appendix G and Appendix K or L). Three of these reservations were part of what was to become the Leech Lake Reservation, those being Lake Winnibigoshish, Leech Lake, and the Cass Lake Reservations. Articles III, IV, V, and VI provided for a cash and goods payment to the tribes for the land ceded. Article VII stated that liquor was still prohibited over the entire area. Article VIII allowed roads to be built. Article IX stated that the Indians must obey the law and adopt a well-regulated society.

In 1858 the Territory of Minnesota was granted statehood. That brings us to our first important issue in this case. That is, only a small portion of what was to become the Leech Lake Reservation, was reservation when Minnesota gained statehood in 1858. By its enabling act (11 Statutes 166, 1857) the state was to be admitted on an equal footing with all other states. When a state is admitted to the union there is discrimination as to equal footing, if it is not granted jurisdiction over all but reserved federal lands (Ward vs. Race Horse, 163 U. S. 504, 41 L. Ed. 244, 1896). If this rule was to be applied in this case, only a small portion of the Leech Lake Reservation would ever have been Indian country in the sense that Minnesota would not have had jurisdiction over it. (Navajo Tribe of Indians vs. State of Utah, 12 IDLA 1, decided June 29, 1973). This question becomes even more troublesome in light of U. S. vs. Minnesota, 270 U. S. 181, 70 L. Ed. 537, 1926 which held that Minnesota had title to all swamp lands given to the state in 1860 despite the fact that

Congress later enlarged the Leech Lake Reservation to include those areas. Therefore, the state, prior to the Nelson Act already owned 150,000 acres within the Chippewa Reservation. Thus, the question is not what the Federal government reserved from the State, but rather what could the Federal government take from the state? This might mean that even some allotments thought to be Indian country since the Nelson Act would not in fact be Indian country. This problem poses some extremely technical issues. The Court declines to consider or rule on these issues. The reason is simple, notice is taken of the fact that from the time Minnesota became a state until Leech Lake Reservation became its full size (1873), the State of Minnesota did not in fact assert jurisdiction over the Leech Lake Reservation. Civilization had not yet reached this area, and in fact Minnesota did not enforce civil or criminal laws therein. State vs. Cloud, 228 NW 611, 1930 held that Minnesota had no jurisdiction as to Indian allotments at Leech Lake and did not distinguish between allotments on the pre-1858 and post-1858 reservation sections. As to this issue, in reference to the Leech Lake Reservation, the Court feels that the general principle of estoppel would apply.

The next treaty by the Mississippi, Pillager, and Lake Winnibigoshish Bands was made in 1863 (12 Statute 1249, Kapplar, Vol. 2, p. 839-42). This treaty proved to be unacceptable and was replaced without ever really taking effect. Thus, it will not be discussed other than to note that it exists.

The 1863 Treaty was replaced by the Treaty of March 19, 1867, 16 Statutes 719, Kapplar, Vol. 2, p. 974-76 (Appendix H). This treaty ceded all of the Mississippi Band Reservations of 1855 with the exception of the Mille Lacs Reservation and the 3 reservations which were later to become the Leech Lake Reservation (See Appendix F). It

then added a large section to the Leech Lake Reservation (this had also been done in 1863 but as to a smaller area, see Appendix K or L). In Article II an area of 36 townships west of the Leech Lake Reservation was set aside as another Reservation for the Mississippi (this was to become the White Earth Reservation). This area was, in part, good agricultural lands. Articles III through V concerned consideration to be paid by the government. Articles VI and VII reflect an earlier attempt to encourage agriculture, by the government plowing land for the Indians. Article VIII allowed arrest of Indians by county officials of the State of Minnesota on the Indian Reservations. In all likelihood this provision was to apply primarily to the new White Earth Reservation which was located close to civilization.

The foregoing includes all of the treaties concerning Leech Lake prior to the Nelson Act. In 1873 another portion was added at the south end of the Leech Lake Reservation to correct a misunderstanding of surveys caused by the incorrect naming of a Lake. A second portion was added to the east side of the Reservation to apparently correct an odd boundary line caused by the meandering nature of the Mississippi River. A third addition at the north end of the Reservation was added in 1874 for an unknown reason. All of these additions (see Appendix K, N, L) were made by Executive Order. Those additions brought the boundaries of the Leech Lake Reservation to their full size prior to the Nelson Act. It is clear (except for possible problems with equal footing in Article VIII of the 1867 Treaty) that the right to hunt and fish on Leech Lake was still in existence in 1889. The problem then becomes as stated in Leech Lake No. 1, did the Nelson Act extinguish the right to hunt and fish on the Leech Lake Reservation? If in fact Congress chose to exercise

its power to extinguish that right by passage of the Nelson Act, then no such right still exists. Only the right to make a claim for compensation for loss would remain. On the other hand, if in fact the Congress intended by the Nelson Act only to exercise its wardship over the Indians as guardian, and in that exercise of wardship, did not intend to affect the right to hunt and fish, then that right remained after 1889 (see Leech Lake No. 1). As stated previously any act (M.S.A. 97.431) by the State of Minnesota respecting that right as to the Reservation would not be subject to attack as violative of equal protection.

VII. THE NELSON ACT OF 1889—GENERAL PROVISIONS.

The Nelson Act of January 14, 1889, 25 Statute 642, Kapplar, Volume 1, pp. 301-06 (Appendix I) contained the following provisions. Section I called for appointment of three commissioners whose duty was to negotiate with all of the bands of Chippewa Indians in Minnesota for the ". . . complete cession and relinquishment in writing of all their title and interest in and to all the reservations of said Indians in the State of Minnesota, except the White Earth and Red Lake Reservations, and to a-1 and so much of these two reservations as in the judgment of said commission is not required to make and fill allotments required by this an existing act . . .". Section I then provided that a 2/3 vote was needed for Indian acceptance at each reservation except at Leech Lake where 2/3 vote of all the Chippewa was to be sufficient. It was stated that an allotment at present on one of the reservations were not to be disturbed by this act (this section only applied to Fond du Lac and White Earth Reservations). For purposes of determining whether a proper 2/3 vote was had and for purposes of allotment, and payments under the

agreement, a census was to be taken. The 2/3 vote was to be filed with the Secretary of the Interior ". . . and the acceptance and approval of such cession and relinquishment by the President of the United States shall, be deemed full and ample proof of assent of the Indians, and shall operate as a complete extinguishment of the Indian title without any other or further act . . .". Section II provided for the commission and bonds and salaries of the commission. Section III provided that as soon as a cession was complete pursuant to Section I, all Chippewa Indians except those of Red Lake shall be removed to White Earth Reservation. There (Red Lake and White Earth) they would be allotted lands and severalty in conformity with the Allotment Act of 1887, 24 Statutes 388 (Appendix J). The Indians already at White Earth, holding allotments, would retain theirs but that amount would be deducted from the new allotments. The last provision in Section III was a key provision. It stated that any Indian could take an allotment in severalty on his home reservation rather than being moved to White Earth. Section IV provided that after cession and relinquishment of Indian title a survey of lands in the manner of public land loss survey should be made. Then all timberland was to be classed as agricultural lands. Section V provided for sale of pine lands. Section VI provided that after allotments by the Indians were taken the land would be open under Homestead law to non-Indians at $1.25 per acre. Section VII provided that the proceeds from the disposal of the lands would be placed in trust for the Chippewa Indians in the State of Minnesota. One-half of the interest should each year be paid to the head of the family, 1/4 to the other classes of Indians, and 1/4 for schools. At the end of 50 years the fund was to be paid out in full. However, it was also stated that Congress could advance up to 5% of the principal and advance $90,000 per year on interest.

The use of the advances was to be 3/4 for needs of beginning agriculture, and 1/4 in cash. Section VII appropriated $150,000 for expenses of census, surveys, allotment, removal, and timber appraisals.

Perhaps some preliminary conclusions as to the scope of this case should be made based on the above provisions. First, Leech Lake No. 1 hinted that its construction of the Nelson Act as to hunting and fishing rights could serve as precedent to White Earth, Nett Lake, Fond du Lac, Mille Lacs, and Grand Portage Reservations. Clearly the latter 5 reservations were treated in the same manner by the Nelson Act except for recognition of existing allotments at Fond du Lac. As to the White Earth and Red Lake Reservations Section I clearly states that only a part of those reservations were being ceded. The remaining portions of those reservations (unceded) were not affected by the Nelson Act as to Indian country. Whether the right to hunt and fish was extinguished as to those portions is not in issue here. Suffice it to say that other treaties and other factors would have to be determined to reach a conclusion as to those portions. The Court feels that the ceded portions of those reservations are treated in the same manner as the 6 other reservations. Both the White Earth Indians and the Pembina Indians (who occupy the ceded portion of Red Lake) could take their allotment or in the case of White Earth, keep their allotment in the ceded portions.

In addition, there is no question that the allotments under the Nelson Act are Indian country within 18 USCA 1151, 1152, and 1162 (State vs. Jackson, supra). Nor is the question presented by this case, whether land re-acquired by the Minnesota Chippewa Tribe is Indian country. The Court therefore expresses no opinion as to that issue. Nor is the status of the Red Lake Reservation in

question (except precedence as to the ceded portion) in light of the fact that before, during, after, and to this day the Red Lake Tribe of Chippewa Indians and Minnesota Chippewa Tribe have been split (Chippewa Indians of Minnesota vs. U. S., 301 U. S. 358, 81 L. Ed. 1156, 1937). The State has no jurisdiction, civil or criminal, over Indians on the diminished Red Lake Reservations (Commissioner of Taxation vs. Brun, supra). The only remaining question is whether the 6 ceded reservations plus the ceded portion of Red Lake and the White Earth Reservation are Indian country as defined by 18 USCA 1151.

VIII. THE UNITED STATES DISTRICT COURT FOR THE STATE OF MINNESOTA'S RULING IN LEECH LAKE NO. 1 AND THE BASIS FOR THAT RULING

The District Court's holding in Leech Lake No. 1 was that the Leech Lake Band of Chippewa Indians retains the right to hunt and fish on the Leech Lake Reservation. The Court based this holding on the theory that as to the Leech Lake Reservation, the government never abandoned its wardship of the reservation. Because the wardship continued, the reservation continued and remained as Indian country subject to 18 USCA 1151. The right to hunt and fish was said to be non-exclusive. The rationale of the District Court's ruling was as follows.

First, the Court stated that the United States Department of Interior was supporting the Indian position in Leech Lake No. 1. That, in the Court's opinion, left Minnesota in the position of objecting to construction of an agreement which both parties agreed to as to meaning (it might be noted that Minnesota was denied its request that the Federal government be brought in as a party to Leech Lake No. 1). The second point that the District Court made was that Leech Lake was often called a reservation

by various governmental bodies. The third factor mentioned by the District Court was that the Nelson Act was silent as to hunting and fishing rights. The fourth factor was that the intention to abrogate treaties is not to be taken lightly. The fifth factor was that the objective of the act was to move the Indians to White Earth, and since this did not in fact occur except as to a small number of Indians the reservation was not extinguished. The sixth factor cited was that the end of legal title does not end jurisdiction over Indians, citing Seymour vs. Superintendent, supra. The seventh factor was that there was still guardianship over the Indians at Leech Lake. The eighth factor was that Congress had passed a number of laws concerning the Leech Lake Reservation after the Nelson Act. The ninth factor cited was that the purported words of cession as to Leech Lake contained in Article I of the Nelson Act did not clearly show a Congressional intent to end the reservation. The Court stated that Congress could have used clear language of cession as had been used by Congress for the extinguishment of the north half of the Colville Reservation (U. S. vs. Pelican, supra). That language was that the north half was vacated and restored to the public domain. The tenth point made by the District Court was that the right to hunt and fish should not be lightly abrogated by acts of Congress, citing Manominee Tribe of Indians vs. U. S., supra. The eleventh point was that PL 280 makes it clear that Indian rights remain, when not extinguished.

These points should be discussed individually. First, that the United States and the Chippewa Tribe now agree that there is an Indian right to hunt and fish putting the State of Minnesota in an "anomalous position". These factors should be mentioned. First, that when a reservation is extinguished, jurisdiction over that area reverts to the

State. Thus, once a reservation is extinguished jurisdiction over that area reverts to the State. Thus, once a reservation is extinguished the real party in interest as to jurisdiction is the State. At that point, extinguishment is complete and as with any type of agreement, the state's interest has vested. Then the problem becomes, can the Federal government take jurisdiction back from the state. At this point it should be mentioned that the state is the real party in interest and it is charged with representation of the rights of all persons within its jurisdiction. As stated previously the interest of the state in jurisdiction and property of non-Indians as well as Indians is very heavy.

The second factor as to the United States supporting the Tribe in this case is that the Federal government is known to have expertise in the subject of Indian treaties. That factor as to this case should have helped the tribe, but since the United States refused to become a party that expertise was not shown. A third aspect of the Federal Court's view is that the Supreme Court has always held that a long standing opinion of the Department of Interior is entitled to heavy evidentiary value in construction of the intent of an agreement (Mattz vs. Arnett, supra). However, as to the Leech Lake Reservation, the transcript of Leech Lake No. 1 shows that until 1969 the Department of Interior in a series of rulings and letters had always taken the view that Minnesota had jurisdiction over the Leech Lake Reservation, except for the allotment areas, based on its interpretation of the Nelson Act. Thus, rather than support the view of the Interior Department putting Minnesota in an "anomalous position" it supports the Minnesota position based on over 3/4 of a century of the same view. Minnesota was not allowed to bring the United States in as a party, so therefore it is unknown what caused the Interior Department to change its view. The

Court can see no "anomalous position" for the State of Minnesota, rather it sees one for the Department of Interior.

The second basis for Leech Lake No. 1 was that the area has often been called the Leech Lake Reservation. This was based on such evidence as highway maps, acts of Congress, and court cases. Calling it a reservation could mean it is indeed a reservation or it could mean no more than a designation of a geographical area. It should be remembered that the Courts always speak of the north half of the Colville Reservation.

The third factor was that the Nelson Act was silent as to hunting and fishing rights. While that is true, so is the Treaty of 1855. So also were almost all treaties which ceded land from the Indians in the western United States.

The fourth factor is that the intention to abrogate hunting and fishing is not to be lightly inferred. This Court supports that view.

The fifth factor is that the end of land title does not end jurisdiction over hunting and fishing. Again the Court supports that position as far as it goes. However, it should be stated that the end of land title can extinguish the right to hunt and fish if the land transfer resulted in the area being removed from 18 USCA 1151 jurisdiction. In other words if a land transfer results in the loss of a status of Indian country, then the land transfer did in fact end such right.

The sixth point is that the end of guardianship ends the right to hunt and fish. This is unacceptable. If it were true, then in almost no case would the Indian right to hunt and fish be ended west of the Mississippi. The Treaty of 1855 did not end the guardianship yet it did limit the

hunting and fishing jurisdiction. Clearly the north half of the Colville Reservation as to allotments is still under guardianship of the United States. But that guardianship does not cause the right to hunt and fish to remain outside the allotments because that area was no longer subject to 18 USCA 1151 jurisdiction (U. S. vs. Pelican, supra). The question in the present case is not whether guardianship was ended but whether guardianship was ended but whether guardianship as to the allotments was ended or guardianship as to the reservation was ended or neither.

The seventh point was that the objective of the Nelson Ace was to remove to White Earth and since only 1/4 of the Indians did in fact move, the reservation remained because as to Leech Lake, this was the sole object of the treaty. The Nelson Act was not conditioned on a removal. Once the State got jurisdiction over the reservation it was not revoked because the Indians did not move to White Earth. As to removal being the sole reason for the Nelson Act more will be said later.

The eighth reason listed in the Leech Lake No. 1 opinion was that after the Nelson Act, Congress passed subsequent laws as to the reservation. While this is true as will be later shown, most if not all acts pertaining to the entire Leech Lake Reservation fail to state that the reservation remains. The remainder of the acts speak to the subjects incidental to guardianship over the persons and land on the allotments.

The ninth reason is that Congress used ambiguous words namely "complete cession and relinquishment in writing of all their title and interest in and to all reservations of said Indians" and "complete extinguishment of Indian title". The court fails to see any ambiguity in these words. Nor has the Supreme Court on just the wording

"ceded" (United States vs. Southern Ute Tribe, 402 U. S. 159, 28 L. Ed. (2) 695, 1971). It should be noted that both the Congress and the Chippewa knew of this wording because it was used in the 1855 treaty (Appendix F). Just the word "ceded" was used in the Treaty of 1867 (Appendix H). The District Court said if Congress really wanted to extinguish Leech Lake it could have used the north half of Colville Reservation words, that is, vacated and restored to the public domain. Indeed they could not have used those words, as will be indicated later herein.

The tenth factor cited was Manominee Tribe vs. U. S., supra. Except for the rule of construction that the Indian hunting and fishing right is not to be lightly abrogated, that case is of little help here. The facts are so very different that to apply them here would require a strained construction.

The eleventh factor mentioned is PL 280. Suffice it to say that if indeed the Leech Lake Band retained the right to hunt and fish after 1889, then PL 280 did not extinguish that right.

As shown, each of the above factors do not in themselves justify finding hunting and fishing rights still remain at Leech Lake. The next inquiry must be whether these factors as a group establish the right to hunt and fish.

IX. THE EARLY HISTORY OF THE NELSON ACT

The first act of what was later to become the Nelson Act was a message from President Cleveland to the Senate and House of Representatives (Senate Documents-49th Congress, First Session, Executive Document #44, dated January 25, 1886, Appendix N). This report consisted of two parts. First, there was a letter from H. B. Whipple, Bishop of Minnesota, requesting a modification of the

Chippewa Treaties. This letter stated several reasons for the need for modification. First, the Indians had been damaged by the building of dams. Second, large amounts of pine on the reservations was being destroyed. Third, the Indians were running out of annuities from the older treaties. The fourth reason was that the Leech Lake, the Mille Lacs and Sandy Lake Bands could not be civilized or protected where they were. And finally, the number of chiefs needed to be limited. The second part was a message from J. D. C. Atkins, Commissioner of Indian Affairs to L. Q. C. LeMar, Secretary of the Interior. This report supported the removal to White Earth of the various bands. It recited that for years the annual reservation reports had encouraged this (p. 2). As to Leech Lake, the dam problem was cited. At p. 5, White Earth is stated to be an excellent area for the Indians, being suitable for agriculture, having water and timber. As opposed to this, Leech Lake is shown to have only a small number of gardens, game, and wild rice which was fast disappearing (p. 4). Sale of land would put the Chippewa in a prosperous way whereas they were now out of money (p. 6). By Congressional act of May 15, 1886, (24 Statutes 44) money was appropriated for a commission to negotiate with the Chippewa. This commission was later to become known as the Northwest Commission. The report of the Northwest Commission (Senate Executive Document #115, 49th Congress, 2nd Session, March 1, 1887, hereinafter Northwest 115) is attached as Appendix M. As an historical sidelight it might be noted that the above act and the Northwest Commission were authorized to do more than negotiate with the Chippewa of Minnesota. It also authorized negotiations with tribes of Indians west of Minnesota in the Dakotas, Montana, Idaho, and Washington. All of these tribes were located at or near what is now know as the Burlington

Northern Railroad and included the Colville Reservation in Washington. The Chippewa agreement was the first of this series (Northwest Report, p. 12).

Following are the provisions generally of the agreement (actually 2 agreements, one general, one only as to Leech Lake) with the Chippewa as negotiated by the Northwest Commission. As to the general agreement the provisions were as follows.

Article I stated that all of the bands of Chippewa would be removed to White Earth (NW 115, p. 39). Article II provided for allotments at White Earth (NW 115, p. 39-40). Article III provided that allotments would be held in trust (NW 115, p. 40). Article IV provided that upon patenting (which was immediate as to this section) the Indians would have all of the benefits of, and be subject to all laws of the State of Minnesota, and in all offenses for which the punishment was death or imprisonment in a state penitentiary. Nor could the state violate equal protection as to this group (NW 115, p. 40). Article V provided that the residue at White Earth after allotment would be granted in common to the tribe to be used to fill allotments for the future Chippewa children (NW 115, p. 40). Article VI allowed use of some timber for farming and building (NW 115, p. 41). Article VIII provided for agricultural tools, rations, schools, blacksmiths, and physicians for the Indians (NW 115, p. 41). Article IX stated that the Chippewa ceded all their right, title, and interest to their lands at Leech Lake and the other small reservations and provided for sale of those lands by sealed bid after appraisal (NW 115, p. 41-42). Article X provided for that money to be in trust for the tribe (NW 115, p. 42). Article XI pertained to back payments to the Leech Lake Reservation (NW 115, p. 42). Article XII separated money to be received by the Leech

Lake Tribe for damages from other trial members (NW 115, p. 42). Article XIII provided that expenses of the agreement were to be paid by the United States (NW 115, p. 42). Article XIV pertained to a township owned by the Pembina Tribe within the White Earth Reservation. Article XV provided that existing treaties would remain in force except as modified.

The supplemental agreement with the Leech Lake Bands had the following extra provisions. Article I restated that the reservation was ceded and provided for removal to agricultural lands at White Earth (NW 115, p. 44). Article II provided for classification of land into agricultural and timber land and sale by that classification (NW 115, pp. 44-45). The remaining provisions repeated Articles XI, XII, and XV of the general agreement.

Some conclusions can be drawn from this agreement. First, that the Northwest Commission must have thought that the wording surrendered all right, title, and interest ended the Leech Lake Reservation. There can be no question that when this reservation was ceded in this manner that the right to hunt and fish was ended. The Court has in mind the fact that by Section 15, all old treaty sections would remain. But as stated before there was no spoken right to hunt and fish in any prior treaty. The unspoken right to hunt and fish was derived from the right to occupy and possess as Indians, and that right now was totally gone. Article XV probably pertained primarily to Article VII of the 1855 treaty which prohibited liquor over the entire 1855 Treaty Cession whether reservation or not. Running throughout the negotiations with the Chippewa (NW 115, p. 27-133) was the theme, of the evil liquor had caused the Indians. Yet no special section pertained to liquor. In fact the prohibition of liquor was upheld (Johnson vs. Gearlds, 234 U. S. 422,

58 L. Ed. 1383, 1913) under that reasoning, even though the same case stated that the reservation had been ceded. Article IV was important in that at least as to felonies Minnesota was to get jurisdiction at White Earth, and the Indians were to get citizenship as soon as allotments were given. The ceded land was to be in trust. Allotments were to be granted in severalty at White Earth (State of Utah vs. U. S., 406 U. S. 128, 31 L. Ed. (2) 741, 1972, for definition of allotments in severalty). The remainder of White Earth was to be held in common by the tribe. The Indians were to turn to agriculture on the allotments.

The motives behind the agreement ought also to be looked at, although they are of course, subject to some conjecture. The District Court in Leech Lake No. 1 said that the main motive was the try for more land by non-Indians. This of course cannot be denied. That however, was not the sole reason for this agreement. The real key to the agreement was the Allotment Act of 1887 (Appendix J) and the attitude which led to this enactment one year after the Northwest Agreement of 1886. The history of the attitude which caused the enactment, is set out in Handbook of Federal Indian Law by Felix S. Cohen, Department of Interior, 1942, Chapter 11, p. 207-10. The reason for that act was that it was felt that the primary reason for the "Indian Problem" was the vast land holdings of the tribes held in common. It was thought that if the in common ownership could be severed by allotting individual small plots of land for farming, the Indian problem would be solved. The reasoning behind this was that this would force the Indians away from their nomadic life of hunting and fishing (which was thought to be evil) and to the industrious pursuit of agriculture (or the White, thus good way). It was felt that

once this change was made, in a short time the Indians would be assimilated into White society and no Indian problem would remain. The Allotment Act of 1887 drew wide support from the white land seekers (Cohen, p. 209), and the railroads (Cohen, p. 209). But the act also drew support from Indian Rights Associations (Cohen, p. 208) and even some Indians (Cohen, p. 209-10). The consequences of this act are set out in Cohen, p. 210-217 but they can only be called devastating to the Indian tribes. There were other motives particular to this act. It was realized that the Indians would need money to begin farming. That money was to be provided by the sale of the ceded land and especially the timber. Another motive was the "welfare" of the Indians at Leech Lake and other small reservations. They had run out of money. They could not cut the timber as mere occupiers. As stated at the negotiations at Leech Lake (NW 115, p. 96) the game had all but been reduced to nothing. As stated in Commissioner of Indian Affairs Reports, 1888, p. 149, the wild rice on Leech Lake had been wiped out by the building of dams on Leech Lake. There is no mention of fishing in any of the reports or negotiations, which might indicate that the Chippewa were not fishermen. At any rate the damming of Leech Lake which added 46,000 acres to Leech Lake might have changed fish locations so greatly that old fishing methods might not have worked. At any rate at this point, the Leech Lake Reservation was abolished, if Congress approved the report.

X. CONGRESSIONAL ACTION ON THE NORTHWEST AGREEMENT.

The first Congressional record on the Northwest Report was the reporting out of committee of H. R. 7935 which was the agreement with several modifications (see

Appendix O). The changes in the agreement were in part based on Congressional objections, in part based on non-Indian objections, and in part based on Indian objections. H. R. 7935 was, as amended, to become the Nelson Act. Congressional objections in the committee report included objection to the method of disposing of the ceded land, that common ownership of land had not been broken at the diminished portion of Red Lake and White Earth Reservations, and that it was only a partial solution, that too much of Red Lake was unceded, that all lands ought to be classed as timber or agriculture, and only agriculture allotted, and the method of trust was disputed (should be all in common as to all tribes). The Indian objections at Leech Lake were as follows. A majority assent had not been obtained by the Commission. The old claims were not settled. No objection was made as to the removal to White Earth.

H. R. 7935 as changed by the committee made its first appearance on the floor of Congress on March 8, 1888 in the House (House Congressional Record, 1888, p. 1886-89, Appendix P). The important provisions of this proposed new agreement were as follows.

Section I was the same as the final Nelson Act except that nothing was said as to allowing Indians to keep present allotments. Section II was the same as at final passage except that the commission's fees were raised from $5 to $10 per day. Section III provided for census and removal to White Earth of all Chippewa except those at Red Lake. Then allotments of land and severalty were to be made at White Earth in trust. The Act then provided that as soon as the allotments were taken, the Indians would be granted full citizenship and have the benefit of and be subject to all laws both civil and criminal of the State of Minnesota. At this point we still have a

complete removal to White Earth and full citizenship subject to all Minnesota law. However, in common ownership of land at White Earth by the tribe had been struck out pursuant to the committee's objection. Section IV separated pine land with a minimum value of $3 per acre from agricultural lands valued at $1 per acre. Section V provided for sale of pine lands by auction. Section VI provided that agricultural lands not allotted under the act were to be sold by homestead at $1 per acre. Section VII set up the trust fund as a credit to the Chippewa Indians in trust for various uses. Basically this section is the same as the final act. The following sections were listed in p. 1886-87 of the Congressional Record. Debate was then begun on the bill. At this point Representative Nelson of Minnesota was guiding the bill. He had also submitted the committee report on the Northwest Agreement (Appendix O).

As the debate continued on the bill, Representative Cobb proposed 2 amendments. At House Congressional Record page 1887, he sought to amend section III so that the Indians on allotments would not become U. S. Citizens and have all rights thereof. His reason was simple. He did not feel the Indians as illiterates, should have the right to vote. This amendment would not have affected State jurisdiction over the tribe. The amendment was rejected. Then Mr. Cobb presented a second amendment. This added to Section III as follows:

> "Provided further, that any Indians residing on any of said Reservations may, in his discretion, take his allotment in severalty under this Act on the Reservation where he lives at the time the removal herein provided for is affected instead of being removed to and taking such allotment on the White Earth Reservation."

Mr. Holman then stated he hoped the amendment would be accepted. Mr. Nelson then said, "I have no objection to it". The amendment was passed. If we are to believe that the Leech Lake Reservation was not extinguished by the Nelson Act then we must believe that without objection from Mr. Nelson, the House allowed the Reservation to be re-established when his committee objected to even the remaining portion of White Earth being held in common. Clearly no one thought that the Reservation status was to be affected by this amendment. As stated by Fowler in *A History of Minnesota,* Vol. 4, copyright 1969 (but written in 1929) p. 222 the effect of the allotment was not perceived. And again at page 231 of the same book Fowler stated that the Rice Commission was recommending "the Reservation System without a Reservation". Congress was allowing the Chippewa to take an allotment but they were not intending to save the reservations other than White Earth and Red Lake.

Following that amendment, Mr. Cobb objected to the Chippewa being put under State Law and to Indians being granted citizenship again. However he proposed no new amendment on it. At p. 1888 an amendment was accepted without objection from Mr. Nelson to allow White Earth Indians to reject allotments in severalty. In this form, the bill passed the House. It might also be noted that at this point one Amendment which is not relevant was offered by Representative Rice of Minnesota.

House Bill H. R. 7935 was first considered by the Senate on October 3, 1888 (Senate Congressional Record, 1888, p. 9129-32, attached here as Appendix Q). The House Bill had been in committee since March. The Senate Committee had made changes in the Bill to the point that it considered the new committee version to be an amendment of the entire House bill (at p. 9129). At

p. 9129-30 the Bill was read into the record. Major changes from the House version are as follows. Section I changed the need of the Commission which was to negotiate with the tribes to report back to the President to effectuate the extinguishment, to a need to report back to Congress which would then accept extinguishment, all right, title and interest. Section II changed the amount of salary for the Commissioners to the amount in the final Bill. Section III which as stated before is the main section as pertains to this case was the same as the House version except for the following changes. First, the amendment which had been added to the House version allowing the White Earth Indians to reject taking land in severalty if they desired to keep in common property ownership, was left out of the Senate version. The amendment by Mr. Cobb allowing allotment at Home Reservations now appeared as part of the Senate version. The House version which had allowed citizenship both State and Federal to Indians along with subjecting the Indians at White Earth to Minnesota jurisdiction was gone. In its place was a provision that allotments would be made in accordance with the Allotment Act of 1887 (Appendix J). The reason for the change from the House version is not known. However it can be noted that Representative Cobb in the House had objected to making the Indians citizens precisely because that subject was covered by a general act (Allotment Act of 1887). In addition the author of the Senate version was Senator Dawes who wrote the 1887 Allotment Act which Representative Cobb wished to use (at 9131 Congressional Record). At any rate, as to the allotments, jurisdiction was to be governed by the Allotment Act. Article IV was changed only as to appraisal methods. Article V provided that all pine could be sold at once rather than 1/10 at a time as in the House version. A section was also added as to land which did

not sell at public auction. Section VI changed the price of agricultural lands to $1.25 per acre and provided for disposal of all non-allotted lands by that method. Thus no in common land was reserved at White Earth. Section VII remained the same except that additional limits were put on the use of advancements, limiting them mostly for farm expenditures. Section VIII remained the same except that the Commission again would report back to Congress. Some debate (not important here, except to note that only White Earth and Red Lake were being spoken of as reservations) followed, and the bill was laid over.

The next reference to the bill was in the Senate Congressional Record, 1888, p. 9353 (Appendix R), where the Senate version was passed adding a protective clause for allotments already granted at White Earth and Fond du Lac. The Senate and the House versions then went to a conference committee.

The bill next surfaced in the House on December 18, 1888 (House Congressional Record, 1888, p. 336-37, Appendix S). A list of the changes the Senate had made are at p. 336 (that list is not complete). Then the bill was read and laid over. The bill was again taken up in the House on December 20, 1888 (House Congressional Record, 1888, p. 396-400, Appendix T). At this time it received its final debate (Senate passage was not debated). The first question debated was whether Congress or the President should accept or reject the new commission's report. Representative Payson objecting to approval of the commission's work by the President stated as follows:

> "The Indian right to it is the bare right of ordinary occupancy. It stands upon the records as unceded Indian land. The only right that the Indians have

upon this land is the right to hunt and fish upon it."

That statement was not objected to. The Court would question the legal correctness of that statement, for there is no question that the House thought they were extinguishing that right. That intent was present. Going on with the question of whether Congress or the President should approve the Commission's report the debate turned to the question, if there was any need for Congress to approve since the commission could not act in its discretion but had to act pursuant to the act. At p. 398 it was stated by Representative Nelson that the commission had no discretion (this was not completely correct because the Commission did in fact have discretion to determine how much of Red Lake and White Earth were not to be ceded pursuant to Section I of the Nelson Act, Appendix I). Remaining debate concerned timber sales. The Nelson Act was then passed.

XI. CONCLUSIONS AS TO CONGRESSIONAL INTENT BEHIND THE NELSON ACT.

The history of this era, especially leading up to the passage of the Allotment Act is relevant here. That history shows that during this period of time the attitude toward Indians held even by many Indian friends was to end the reservation system and the concept of Indian in common ownership. The simple reason behind this was assimilation into society. The way to accomplish this was by the allotment of reservations. The allotments were to be small plots of land suitable for agriculture.

As to this particular group of reservations, White Earth was thought to be the only reservation capable of supporting what was later to become the Minnesota Chippewa Tribe. It did in fact contain good agricultural land.

Agency reports, visits by such men as Senator Dawes (who authored the Allotment Act of 1887), The Northwest Commission Report, The House Committee Report, and letters of various persons, all supported removal to White Earth. The Indians at Leech Lake had already agreed to removal once before. The original bill as introduced called for cession of all reservations except White Earth and Red Lake, and so much of those as were not required for allotment, at the discretion of the commission.

In order to say that the intent of Congress was that the reservation was to remain, we would have to assume that Congress felt that White Earth and Red Lake (where Congress wanted the Indians) could be reduced in size by discretion of the commission but the other reservations (where Congress thought few would stay) could not be reduced in size. We would also have to assume that Congress went from an intent to end all but Red Lake and White Earth (the Northwest agreement and the bill being considered would have done that) to an intent to allow all reservations. We would also have to assume that the Minnesota delegation had no objection to this. The debate after that amendment, always refers to White Earth and Red Lake as separate from the ceded areas of those reservations and the other reservations. The Nelson Act does allow taking of allotments within the home reservation, but that is a reference to the geographical area within which allotments can be taken. In addition, the Court can find no ambiguity in the words "complete cession and relinquishment of all title and interest to reservations", nor is "complete extinguishment of Indian title" ambiguous. If those words are ambiguous, then as to Chippewas located in Minnesota, we would have to find the words used in the Treaties of 1837, 1854, 1855, 1863, 1866, and 1889 ambiguous as to words of conveyance. So also

would the words of conveyance in all but a small number of treaties concerning land west of the Mississippi be ambiguous in wording as to conveyance. The Congressional intent was to extinguish all but a portion of the Red Lake and White Earth Reservations.

XIII. COMPARISON WITH THE COLVILLE CASES.

The District Court in Leech Lake #1 found the factual situation to be analogous to the factual situation concerning the Colville Reservation, citing Seymour v. Superintendent, supra. The District Court also found that if Congress had really intended to end the Leech Lake Reservation it could have used the language used as to the north half of the Colville Reservation, that is, vacated and restored to the public domain (27 Stat 62, Act of July 1, 1892). This Court also finds the standards of Seymour v. Superintendant, supra and U. S. v. Pelican, supra to be determinative in this case.

The first reference in the Congressional record of what was to become the Colville North Agreement of July 1, 1892, 25 Stat 62 (Appendix U) was on April 27, 1892 (House Congressional Rec., Appendix V). On that date Representative Wilson of Washington sought unsuccessfully to bring the Colville Agreement to an immediate vote. The reason for his haste is apparent from the debate. He had received telegrams stating that 2,000 "boomers" (non-Indian trespassers) had entered the north half of the reservation and it would cost more to remove them than to conclude an agreement. This attempt failed and there was no further discussion of the matter that day.

On May 2nd the bill came up to the House for a second time (presumably, with the Boomers still on the land). At this time the bill was read into the Congressional Record at 3837-40 (Appendix W). The bill was actually

an agreement concluded by the Northwest Commission (again the same commission which had drawn the original Chippewa agreement) on May 9th of 1891. Anticipated passage of that agreement had apparently led to the boomers moving on to the north half. This agreement, as to the north half, was concluded within two years of the Nelson Act of 1889 of which the negotiators probably had knowledge. The Colville Agreement of May 9, 1891 had the following important provisions.

Article I called for surrender and relinquishment to the United States of all right, title, claim, and interest in and to the north half. This is of course very similar to the words and the same in meaning as the Nelson Act.

Article II allowed each Indian on the ceded portion of the Reservation (the same words as in the Nelson Act) to select an allotment on the ceded portion. This again is the same as at Leech Lake.

Article III provided that instead of selecting an allotment on the north half, the natives could remove to the south half of the reservation.

Article IV provided that a school and a mill would be erected on the north half.

Article V provided for a cash payment for the north half of the reservation to be held in trust.

Article VI provided that the allotments could not be taxed. It also provided that the Indian right to hunt and fish was reserved. There is no intent to overstate this, but someone, presumably the Northwest Commission or the tribe, thought that when a reservation was ceded with allotments given, the right to hunt and fish had to be reserved.

Article VII provided for a blacksmith.

Article VIII "provided" for non-signers of the original agreement. Suffice it to say that any Indian who did not sign was jeopardizing getting anything. This may have had an effect on getting the Indians to agree with the Northwest Commission.

Article X provided that a school could be built on the ceded portion for the remaining allotment Indians.

Article XI provided for a cash payment to five of the Chiefs. Again this was perhaps a great influence on reaching an agreement with the tribe.

Article XII provided for approval by Congress of the new agreement with the tribe.

The House would not accept the agreement in that form (as with the 1st Leech Lake Agreement). At Congressional record p. 3840 they amended the agreement as follows (Mr. Wilson again speaking). They accepted Articles I, II, and III as written in the agreement. Thus the same cession words remained and the Indians could take allotments or remove to the south half (in other words the same as the Nelson Act in those respects).

Article IV providing for a school was struck out. In its place was a new Article IV. This did away with the flat cash payment for the reservation provided for in the original Article V of the agreement. In its place the new Article provided that all land not needed for allotments, would be open for homestead at $1.25 per acre and that the proceeds of that homestead would be put in the U. S. Treasury for the credit of the tribe. Such fund would be paid out under the rules and guidelines of the Sec. of the Interior. This article was also substantially the same as in the Nelson Act. Again the intent was to prevent the use of public funds to pay the tribes.

Article VI was then changed to number V. This was the hunt and fish reservation. Thus, the House must have believed that on a "cession and relinquishment of all right, title, and interest to a reservation", the reservation of hunting and fishing rights was necessary. This belief is apparent just two years after the passage of the Nelson Act.

Articles VII, VIII, X and XII were stricken from the bill. Article VII was the provision for a blacksmith. The striking of VIII is of some interest in that the House must have felt that this was covered by a new article, that funds would be paid out by the rules of the Secretary of the Interior. Article X did away with the building of a school on the ceded portion. Article XII was the approval by Congress provision. Article IX was changed to Article VI and it was added that Indians would have to agree to the bill in the same manner as they did the Northwest agreement and the President could then approve the cession. Again this was substantially the same as in the Nelson Act.

A Section II was then added. This section first appropriated money for surveys, allotments, and new negotiation. Again this is the same as the Nelson Act but somewhat less money (there was no need to appraise the timber here, nor was the area as large as the Chippewa cession area). This section also added, allotments would be held subject to the Allotment Act of 1887 (Appendix J). Again this was the same as the Nelson Act. The bill then passed the House in the above form. Suffice it to say that other than the timber provision and the hunting and fishing provision, the two bills (Nelson Act and the House Bill concerning the north half of the Coleville Reservation) are virtually the same.

The House Bill came up for consideration in the Senate for the first time on May 20, 1892 (Congressional Records, 1892, p. 4469-70, Appendix X). Again as in the Leech Lake

case the Senate struck the entire House Bill and substituted a substantially new bill. This new bill provided as follows.

Section I provided that subject to all allotments in severalty (the same term as in the Nelson Act) the north half was vacated and restored to the public domain and was open to settlement by the President. These are the words cited in Leech Lake No. 1 as the words Congress could have used in the Nelson Act as to the Leech Lake Reservation. This Court feels that they could not have been used and that (although we are not concerned with moral problems of Congressional intention) they never should have been used at Coleville. The use of the words vacated and restored to the public domain (which were unusual words of cession in Indian agreements of that era) were used because of the "problem" noted by Representative Wilson at Congressional Record p. 3712 just one month earlier, of the 2,000 "boomers" who had come onto the reservation. The Court can find no record of the "boomers" having been forced off this land. If they were not removed, then they would be able to keep their "claims" to the land prior to the opening of the reservation. In light of the fact that an opening of public land the best land was claimed first, it would be interesting to find out whether the Indians were able to remove these 2,000 "boomers" off the best land and to take allotment on that land. We know in 1974 that the Indians should have had the right to do just that but we doubt that in 1892 they were in fact able to. Leaving aside that line of reasoning, there is a far more important reason for not using that wording in the Nelson Act.

This reason is simple. The Indians had some friends who, however misguided they may have been were trying to assist them. For example, Bishop Wipple, whose letter created the Northwest Commission (Appendix N) had

spent much time among the Chippewa. Rice (who was later to negotiate the Nelson Act with the Indians) had also spent much time among the Chippewa. At one point during the Northwest Commission negotiations (Chippewa phase) the Chippewa had objected to dealing with a commission and instead wanted to leave the negotiation to their friend Mr. Rice. Transcripts from the Rice Commission Negotiations (Executive Document #247, 51st Congress, 1st Session, Appendix Y, hereinafter Rice Report) at p. 114, and 127 show great respect for Rice by the Indians. At p. 187 is an example of how Rice had indeed helped the Chippewa on several prior occasions. Granted, both men supported the allotment concept which was to prove disastrous to the Indians (see Cohen, supra, p. 210-17) but both men seemed to see the concept of assimilation as one necessary to the survival of the Indians. And perhaps in 1887 it was necessary. The Coleville north "boomer" situation illustrates what could happen if an agreement was not concluded. That is, "boomers" would tresspass and take the best land and Congress would discourage removing them. The efforts of these men pointed towards allotment by severalty of the Indian lands. But it was realized that the Indians could not undertake agriculture on empty stomachs with no funds for tools or education. Thus, the efforts of these men was to get full value for the extinguished reservations to begin this new life. This, under both the North Coleville Agreement and the Nelson Act would be in the form of the trust funds (it might be noted that this method also prevented the Public Treasury from being depleted, which was of no small concern to politicians from states which had no Indian Reservation). Under the Coleville Agreement all was to be sold under Homestead Law for $1.50 per acre (see Act, Appendix U). Thus the 1,500,000 acres ceded would yield somewhat less than $2,250,000 (some-

what less because all land would not prove to be worth $1.50 per acre and some of the areas would be water). The result of this was that land worth less than $1.50 per acre would not sell and the Indians would get nothing for it. However land worth more than $1.50 per acre (for example timbered lands which might be worth $3, $5, or $10 per acre) was still sold for $1.50. This problem was recognized by the boomers of the Nelson Act. The original committee report on the Northwest Commission sought to separate agriculture and pine lands, with the pine lands only being sold after appraisal (Appendix O, p. 6). At Congressional Record, 1888, p. 9130, Appendix Q, Senator Dawes, (who wrote the Allotment Act) described the pine-agricultural type sale as a plan for the benefit of the Indians that would provide between 5 and 10 million dollars for the trust fund, just from the sale of timber. At Congressional Record, 1888, p. 398 Mr. Nelson in explaining his reasons for the pine-agricultural distinction stated that if the reservation were to be open for homestead as to the pine lands, the timber interests would send in mill-hands and choppers to homestead, paying $1.25 per acre (homestead price), cutting the timber which was worth more than $1.25 and then abandoning or selling the property. At any rate the timber land was to be appraised in value first. Then bids were to be made wih no bids allowed lower than the appraised rate. The agricultural lands were to be sold separately at $1.25 per acre. Taking the estimated value of the timber lands to be sold at $10 million dollars (the figure most often used in the House and Senate Debate) for the 3,500,000 acres being sold, and allowing no value for the agricultural lands, that would figure out to over $2.75 per acre. That was a good deal as Indian agreements in that era went. In fact, by 1925, $10,000,000 had been realized off timber sales alone (see Fowler, supra). This did not include amounts

for agricultural lands or from the creation of a national forest (that subject will be covered later).

It can, therefore, be seen why Congress did not use the words restore to the public domain. The land first had to be separated into pine and agriculture, then valued as to the pine, then sold in order to get full price. The area could not be open for homestead sale under public domain laws until the pine areas were first separated in order to get full value. The words of cession used in the Nelson Act and in the North Coleville Act are not different in respect to extinguishment of the reservation, but differed only as to disposition of the ceded lands.

Nor can it be believed that the House version of the Coleville Bill did not extinguish the reservation, whereas the Senate version did (keeping in mind that the House version is nearly the same as the Nelson Act). The House was, during this period of time more hostile to the Indians than the Senate. There is every indication in debate that the House thought that their version would end the north half of the reservation.

Section 2 of the Senate version of the Coleville Bill then stated that payment by homesteaders would be put in the U. S. Treasury to be used as Congress saw fit for public purpose, and until that time for the schools and taxes of the Coleville Tribes. Section 3 provided for homestead by non-Indians. Section 4 provided for allotments for Indians remaining on the north half under the Allotment Act of 1887. The only preference over "boomers" given to the Indians was where they had improvements. Section 5 provided that the Indians could also remove to the south half. Section 6 provided for schools and mills on the north half. Section 7 provided money for the surveys. Section 8 stated that this agreement

was not to show recognition of Indian title to the south half.

The Senate bill was enacted into law rather than the House bill (Appendix U). That bill ended Indian title to the reservation. It allowed Indian title to allotments. The Indians received only the proceeds of the sale if Congress chose to give them. The Senate version allowed no Indian in common rights to hunt and fish. As stated in dicta in U. S. vs. Pelican, supra, the north half of the Coleville Reservation was diminished and as such, only allotments remained Indian country within 18 USCA 1151. The situation at Leech Lake and the situation at the north half of the Coleville Reservation are virtually indistinguishable. The history of that era is the same as to attitude toward Indian land exemplified by the goals of the then recent 1887 Allotment Act. Both agreements originated from agreements based on the Northwest Commission. The Northwest Agreement looked in large part to be based on the Nelson Act or similar acts. The general concept of both acts was similar, that is to say they extinguished title, allowed allotments at home, and put proceeds to work for development of the allotments. In other words the acts turned Indians to farming and away from the Indian nomadic life style.

The District Court stated the wardship of Indians at Leech Lake continued and a majority never removed to White Earth. The District Court also found that the Leech Lake Reservation continued to be called that. Finally the District Court found that Congress continued to pass acts concerning Leech Lake. Some of these factors will be discussed later, but for now suffice it to say that each of these points are true as to the north half of the Coleville Reservation. Yet, it is recognized tha. except for allotments, the north half is not Indian country.

The 1906 Coleville South Agreement (34 Statutes 80, Appendix Z) is not comparable to the Nelson Act. As pointed out by Seymour vs. Superintendant, supra, the 1906 Act had no language similar to the 1892 act, vacating the reservation. In the 1906 act the south half was merely open to homestead. The 1906 act did contain a trust similar to the Nelson Act of 1889 but the fact that there is a trust is in itself not determinative of cession. When a cession has clearly taken place, as to extinguishment of a reservation, it alone does not save jurisdiction (see for example United States vs. Southern Ute Tribe, 402 U. S. 159, 28 L. Ed. (2) 695, 1971). The Seymour case also noted that Congress had explicitly recognized the existence of the south half. As will be noted later this is not true of the Leech Lake Reservation. Finally Seymour found that the Interior Department had always taken the view that the south half was still a reservation. As stated previously, until Leech Lake No. 1 was begun, the Interior Department had always held that Leech Lake was not a reservation. Thus we find that the south half of the Coleville Reservation is not relevant to this case.

It should also be noted that by 1906 the consequences of the Allotment Act of 1887 were being felt. Cohen at p. 214-15 states that friends of the Indians who had supported allotment were beginning to see that it was an ideal which they had supported, but which they could now see had failed. Cohen at p. 80 states that 1900-1909 was a period marked by administrative flexibility rather than the old system (prior to 1900) of terminating the Indian dependence on the administrative authorities. In short, Indian land was still being opened but jurisdiction over the reservations would remain (as at Coleville South) rather than ending the jurisdiction over Indians in order to thrust the Indians into society as had been done at

Coleville North and with the Chippewa. This Court finds the Nelson Act to be clear, unambiguous, and in practical wording to have extinguished the Leech Lake Reservation. There are, however, additional factors which lead to that conclusion.

XV. THE RICE COMMISSION.

The Rice Commission was created by the Nelson Act to negotiate the agreement with the Chippewa. A transcript of the negotiations is contained in House of Representatives Executive Document #247, 51st Congress, first section, pp. 66-193 (Appendix Y, hereinafter Rice Report). This type of transcript is evidence despite the fact that the transcripts are sometimes slanted to reflect what the commissioner desires to show. In this case the Court considers that danger somewhat less than usual, because of the presence of Mr. Rice. The District Court in Leech Lake No. 1 allowed testimony by Chippewas as to what ancestors had told them transpired at the negotiations. Although this appears to be hearsay on hearsay by interested parties, it is perhaps legally admissible under the liberal rules regarding construction of Indian treaties, but ought to be carefully used when transcripts of negotiations are available and have no apparent defects. Mention of all sections of the Rice Report which are found relevant to jursidiction over the Minnesota Chippewas, or discussions as to hunting and fishing rights should be made. Mention should also be made of negotiations at the Leech Lake Reservation and those of other reservations. The use of other reservations is only for two purposes. First, to show the thinking of the commission and second, because Indians at one reservation traveled to other reservations to learn what was going on. When such visits were being made it will be noted, however, there is no intention to rule as to any of the reservations, except Leech Lake.

It should also be stated that the President's message to Congress (Rice Report, pp. 1-3 clearly shows he thought the reservation had ended). So also it is clear that the Interior Department thought only allotments would remain at the ceded reservation (Rice Report, pp. 3-13). And the Interior Department still believed most Indians would remove to White Earth (Rice Report, p. 6).

The relevant portions of the negotiations at the White Earth Reservation are as follows. At p. 89 it was said as to allotments, that when hunting, the Indians needed more land, but as farmers they would need less. At White Earth, p. 93 the Indians asked whether the laws of the State of Minnesota would be extended over White Earth. The reply was not clear except that the property of the Indians would not be subject to tax. Also it was said that civil process could not be served. However this discussion was as to the undiminished portion of White Earth and the allotments on those parts. At p. 95 jurisdiction again was discussed and Rice stated that when the Indians became citizens of the state, their land could not be taxed. As to White Earth, Rice stated at p. 95 that the unceded portion that remained after allotment could not be sold without another agreement. At p. 103-104 this was again discussed. Rice stated that it was for the good of the tribe to extend the law over them. At p. 105-106 the cession of part of White Earth (as authorized by the Nelson Act) was discussed, or as the Indians understood it "cut off". Four sections were in fact cut off. Rice stated the policy behind cutting off, to be a reduction in size of reservations to a point where the Indian good was reached (at p. 106). One of the Indian negotiations asked, speaking of White Earth (ceded section) and Leech Lake, if a man has two yoke of cattle isn't it better to dispose of one first. The commission reply was, if the yoke gives trouble it is better to sell it while a good price can be got (at p. 106).

An overall view of the White Earth negotiations p. 85-116, leaves no doubt that the main portion of White Earth and the four sections being ceded and the other reservations were being treated differently.

The next series of negotiations are the key ones insofar as this case. These are the negotiations with the Leech Lake, Cass Lake, Lake Winnibigoshish, and the Oak Point Indian Band. These four bands were the residents of the Leech Lake Reservation. The key negotiations were with the Leech Lake Band. This was the first of this series of negotiations. The Northwest Commission had negotiated with the Leech Lake but had not gone to all of the other bands. One result of this was that the other bands, not wanting to be left out of this series of negotiations, showed up in force at Leech Lake. At Leech Lake, speakers (as by custom only appointed Indians spoke as representatives) were at times appointed to speak for all tribes (p. 119). At least some of the Leech Lake Indians had been at White Earth. The first five councils at Leech Lake saw no real negotiations. Prior to even those councils the negotiators had arrived at Leech Lake and had been imprisoned by the Indians (using that term in a loose sense) and had not been allowed to talk to any tribal members. In the fourth session a riot or disturbance ended the session (p. 130). The reason given by both the commission and the Indians for the delay was that they refused to negotiate the new treaty (Nelson Act) until their old claims were satisfied. These old claims were several in number, but two were by far the most important to the Indians. The first was a claim by the pillagers for lands ceded under an 1847 treaty (p. 125). A good summary of the basis of this claim is contained in Fowler, A History of Minnesota, Vol. 4, p. 230. Briefly, in 1847 the Chippewa had ceded a large area of land to the United States (Appendix G). The United States was then to move the Manominee Tribe of Wisconsin into that area (see Manominee Tribe vs. United States, 391 U. S. 404, 20 L. Ed. 697, at p. 702, footnote 12, 1968). The Chippewa received $15,000 for this land. Part of the reason for the treaty was to put a buffer zone between the acknowledged enemies, the Sioux and the Chippewa. At any rate the Manominee never left Wisconsin, and as to the land in the buffer zone, they resold that to the Federal Government for $242,000. In other words for land which the Chippewa had occupied for generations, they received $15,000 and no buffer zone. For the same land which the Manominee Tribe had never occupied they received $242,000. The second major claim was for the damming of Leech Lake. This had flooded 46,000 acres of Indian land including gardens, burial grounds, and forest. But the damming had also ruined Leech Lake for the traditional Indian use of wild ricing. The wild rice areas had been flooded. If the Indians had done any fishing in Leech that may have been ended by the rising water. It is unlikely that old fishing spots would remain unchanged or that without the use of modern equipment the Indians could relocate the fish. A combination of the above factors probably led the Indian speaker at p. 129-30 to say that a subsistence from the lake had been ruined and that they now had to dig snake root for a living. At p. 126 one Indian, who was later to lead the disturbance that day, stated that the young braves did not wish to sign the agreement, rather they wished to sell the reservation as they saw fit to who they saw fit. At the fifth session the first break in the negotiations came at p. 132-33. The first discussion of the Nelson Act then took place. At p. 134 Rice explained that the Indians could remain on allotments at Leech. At p. 135-36 the commission stated that game was fast disappearing and that the only way to survive was to turn to farming. It was also

explained that they would give farmland, and the timber trust funds would provide money to make them prosperous farmers. The eighth council at Leech p. 140-141 contains one of the key passages in the negotiation. An Indian speaker stated at p. 140 his concept of the allotment in severalty. He described it as a rope put on him so the allotment could not get away. Also that he could go here and there like white men if he behaved himself because the line of allotments was not a chain holding to his allotment. Mr. Rice then replied to this description by saying that there was one point which the Indians had to understand (at p. 141). That was, that with regard to the reservation after allotments had been taken, that the Indians would have nothing whatever to do with what was left. At that point the Indians requested that a raising of the hands take place as to those points. The commissioners rose and raised hands promising to do all in their power to carry out the agreement. This was the only point in the commission's negotiations where this was done. At the tenth session the agreement was signed. Another session was held after that apparently for friendly discussion. At that session (p. 147) agriculture was again stressed. One Indian also asked whether after allotments, he could go anywhere on American soil. Rice replied yes, but he would be subject to the same laws as whites. As stated this was the big Leech Lake Reservation negotiations. If the transcripts are worthy of any belief, then there is no question that the Indians understood that they were to get allotments, but that the remainder of the reservation no longer remained Indian country. It was no longer within the meaning of 18 USCA 1151. The commission then went on to Cass Lake, even though many of the Cass Lake Tribe had been at Leech Lake. At p. 149 the switch to allotments and agriculture with a trust fund was explained. Again it was stated that the game had

left the country. At p. 150-151 is a statement by Rice which comes closest to the question of hunting. Rice stated that the young men would not be confined to the reservation but could go where they like as the white man does. Further, he stated that the government had never objected to hunting through that country and would not so long as the Indians did no wrong. At first glance this might appear to be giving a right to hunt in common. However in context he was not speaking of hunting, rather, only of jurisdiction which in general would be the same as for whites. They realized Indian country was being ceded again and both knew the result of the 1855 cession. At Lake Winnibigoshish little was added other than a special plea for damage caused by the loss of wild rice due to the dams (at p. 154). Again little of interest was said at White Oak Point other than the commission stating the need for a new life style (farming) for the Indians (at p. 160).

The commission then went on to the other reservations. By this time the Leech Lake question was over and no Leech Lake visitors were present. However some statements do reflect on the commission's thinking. At Mille Lacs p. 169 in response to a question as to the right to hunt deer, Rice stated that that was a question for the State Legislature. At Grand Portage p. 178 in response to a question as to fishing rights (the only reference as to fishing rights in all of the negotiations which at least indicate that the other bands were not fishermen) Bishop Marty replied that those would be regulated by the State of Minnesota and that non-compliance would be punished. At Bois Fort p. 180 Bishop Marty stated that the Indians could hunt as before. But at p. 184 he qualified that by stating that the right was the same as the white man's.

In conclusion it is found that the Indians and the commission understood that a cession of the reservation was being negotiated. It was clear that both sides understood the concept of allotments and that the remainder of the reservations would no longer be Indian country. It was also understood that the game and wild rice life was nearing an end and that agriculture on the allotments would replace it. It was clear that the commission thought that most Indians would remove to White Earth which as to the unceded portion was being treated differently than the ceded portion. It was also clear that the Indians knew that off the allotments they were to be treated the same as all whites, with the same rights and responsibilities.

XVI. THE EFFECT OF THE LEECH LAKE AREA BEING CALLED A RESERVATION AFTER THE NELSON ACT OF 1889.

The District Court in Leech Lake No. 1 took evidence of Congress having passed legislation dealing with the Leech Lake area as the Leech Lake Reservation.

Evidence was also submitted that such things as highway maps called the ones the Leech Lake Reservation. As the Supreme Court has often said, an area being called a reservation can mean one of two things. First, that it is a reservation or second it may describe a particular geographical area. The present Leech Lake Reservation is part of each aspect of this. First, it was a reservation for two purposes. The first was to ascertain where allotments could be taken. In other words it was the outside boundary of the allotments under the Nelson Act. Second, it was an area within which all proceeds from disposition of the reservation were to go to the Chippewa in trust. Residents of this area (as known by the census) were

to be the beneficiaries of that trust. Thus, although jurisdiction did not remain, certain meaning was still attached to the word reservation.

Congress has not always called this area the Leech Lake Reservation. 25 Statutes 286, 1908 which created the Chippewa National Forest out of much of what was the Leech Lake Reservation, spoke of this area as the ex-reservation. 32 Statutes 403, 1902 stated that the ceded reservation was open to homestead. In 30 Statutes 929, 1899 called the area the ceded and diminished reservation (Appendix AA). 43 USCA 731 and 43 USCA 1172 both state that this area is ceded reservation within the public domain. The above are but examples of that language. It must be kept in mind that almost all reservations especially those with remaining allotments such as the north half of the Coleville Reservation are called reservations and, as at the north half, it means a geographical area not included in 18 USCA 1151 area.

XVII. THE EFFECT OF CURRENT AND PAST CONGRESSIONAL ACTS CONCERNING THE WARDSHIP OF INDIANS AT LEECH LAKE.

The District Court in Leech Lake No. 1 held that the termination of Federal supervision, rather than the termination of reservation status, determined hunting and fishing rights based on Manominee Tribe vs. United States, supra. But the fact situation in that case was one where the Termination Act in question was being read in light of passage of PL 280, supra passed that year. PL 280 had reserved hunting and fishing rights from Operational Law. The statement as to termination of guardianship, referred to the fact that that was to take place after the enactment of PL 280. Thus the Court held that since the termination did not take place until after PL 280,

the hunting and fishing rights remained. As to the blanket statement that hunting and fishing rights end with the termination of guardianship, then none of the various Chippewa Treaties must have ended hunting and fishing rights. Nor must have the hunting and fishing rights been ended at north Coleville. Nor must have the hunting and fishing rights have ended on the 90,000,000 acres of Indian land ceded in the United States between 1887 and 1900 with allotment. In other words it is the end of jurisdiction not the end of wardship that ends the Indian right to use the land in the Indian way. In Manominee it was not clear in light of the termination in PL 280 being passed in the same year, with wardship phased out over a period of 7 more years that the right to hunt and fish was ended. In the present case the clear intention was to end the Nomadic life and switch to hunting and fishing. Again this was clear in light of the history of the era and the history of the Nelson Act itself.

The fact that federal wardship over Minnesota Chippewas continued after the Nelson Act cannot be disputed. But the purpose of the Nelson Act was to sever the tribal in common property rights and to switch the Indians to farming on allotments. As to the allotments, of course, the federal government acted in wardship after 1889. It owed to the Indians help in beginning and improving farming on the allotments. Aboriginees in Minnesota by N. H. Winchell, 1906-1911, Minnesota Historical Society Publication, p. 635, stated that the Nelson Act had caused the passage of Chippewa land from a condition of reservations to a condition of ceded land with allotments. It then stated that the Nelson Act had changed wardship, from wardship over the reservation toward ship over allotments and that as to the allotments, more rather than less wardship was needed. As stated by Cohen, supra,

p. 210-217 the high ideals of the allotment proved to be folly and disastrous to the Indians. By 1934 Congress had realized the policy error and a new policy was begun. This policy is stated at Cohen, supra, p. 83-87. Briefly that policy calls for re-creating tribal government and ending the passage of land from Indian hands. This policy led to expenditures for medical care, housing, and education on the Leech Lake Reservation. But this wardship did not change earlier policy and re-create jurisdiction. At the Leech Lake No. 1 trial evidence was introduced that at least in some cases these services were only available to resident Indians of the Leech Lake area. It was admitted that the reason for providing those services was monetary. It is questionable whether area limits can be placed on those federal services. This does not change, however, what was done in 1889.

As to some, wardship still exists at Leech Lake. But it exists as to allotments not as to the reservation. The term reservation is often applied to this area but it is for the purpose of geographic description rather than political descriptions.

XVIII. CONCLUSIONS AS TO CONGRESSIONAL INTENT.

There is no question that Congress intended to end this reservation by the Nelson Act. The history of that era concerning the change from in common ownership to allotments in severalty establishes that. There was cession and relinquishment of all title and interest to all reservations except part of White Earth and Red Lake and such cession and relinquishment operates as a complete extinguishment of Indian title. The manner in which the allotment at Leech Lake arose, that is by unobjected to amendment is also evidence especially in light of the

fact that the allotments were to be in severalty. The objections to allowing any in common land at even the remaining two reservations were clear. Post-1889 Congressional measures concerning Leech Lake were in the nature of guardianship and wardship as to the allotments not the reservation.

IX. TREATMENT OF THE LEECH LAKE RESERVATION BY CONGRESS AFTER 1889 AS TO THE NON-ALLOTMENT AREAS.

In Northwestern Band of Shoshone Indians, 324 U.S. 335, 89 L. Ed. 985, 1945 it was held, that how land was treated after an Indian agreement is of some evidence whether a reservation remains. In this case the school sections are of title in the State of Minnesota by virtue of statehood statutes and by virtue of equal footing. Some 153,000 acres of the ceded portion under the Nelson Act became subject to the swamp acts and passed to the State of Minnesota (U. S. vs. Minnesota, 270 U. S. 181, 70 L. Ed. 539, 1926). Both of the above transfers are invalid if the reservation still existed after 1889. Under Minnesota vs. Hitchcock, 185 U. S. 373, 46 L. Ed. 954, 1902 Minnesota received no school lands within reservations. As stated before, the Leech Lake area was open for homestead as a ceded reservation without any consultation with the tribes (32 Statutes 403, 1902). In 1908 the Chippewa National Forest was created on the "extinguished Leech Lake Reservation" (35 Statute 286). That forest covered almost the entire area of the Leech Lake Reservation. It, in effect took all lands not alloted, not school sections, not swamp lands, not homesteaded, or not sold as timberlands. One of the reasons stated for creation of the national forest was to give sporting people a place to hunt and fish (See Fowler, A History of Minnesota, Vol. 4, for

details of creation of the national forest). Again, Congress created the forest without consulting the Chippewa Tribe. Certainly this is evidence that Congress felt it did not need to.

XIX. ATTITUDE OF THE DEPARTMENT OF INTERIOR TOWARD THE LEECH LAKE INDIAN AREA.

There are several factors which are of use as evidence to whether a reservation was terminated. The District Court in Leech Lake No. 1 stated that as of the date of that suit the Interior Department supported the Indians. Since the State of Minnesota was not allowed to bring the United States into that suit as a party, that expertise is only shown on the record as a legal conclusion and reasons for that conclusion are unknown.

The Supreme Court has found that the Department of Interior position is evidence of termination of a reservation. In Mattz vs. Arnett, supra, it was found that the department's attitude as to suitability of the reservation for Indian occupancy was relevant to show whether the reservation was ended by the act. In the case of the Leech Lake Reservation the department's attitude was clearly that Leech Lake was not suitable for Indian use in 1889. One of the many examples of the department's attitude is contained in Commissioner of Indian Affairs Report, 1873, at p. 180 which called for the ending of the Leech Lake Reservation. The letters of J. D. C. Atkins, Commissioner of Indian Affairs, January 14, 1886 which accompanied the the message of the President, Executive Document 44, 49th Congress, First Edition (Appendix N) at p. 2 states that removal from Leech Lake was a most desirable objective. At p. 4 it was stated that the wild rice and game was fast disappearing. A second letter by J. D. C. Atkins of Feb-

ruary 11, 1887 approving the Northwest Agreement stated that the ceded reservations were of no use to the Indians (Senate Executive Document 115, 49th Congress, Second Session, Appendix M, p. 9). Commissioner of Indian Affairs Report, 1888, at p. 149 stated that the dams at Leech Lake had wiped out the wild rice and that removal should be made. There is no question that the Department of Interior wanted this area to be ceded because among other reasons it was not suitable for Indian use.

The second aspect of the Department of Interior's attitude to establish whether a reservation has been ceded or remains, is the rule that the long-held attitude of the Department of Interior is heavy evidence of how a document or agreement should be read. This is perhaps the single largest factor in determining whether Indian country remains. The Commissioner of Indian Affairs Report from 1889-1899 reflect the attitude towards Leech Lake. Following the report of the Rice Commission, appraisal of the timber had to be made. This had to be done before any other steps were taken because pine lands were not to be allotted. Thus in 1890 the Indian Reports (p. XLI-XLII) show Leech Lake as diminished, but the map of all Indian Reservations still show Leech. In 1891 the report shows White Earth and Red Lake as reservations but Winnibigoshish (part of Leech) is not listed as a reservation. In that same year at Vo. 2, p. 113 Leech is listed as ceded. In 1893 White Earth and Leech Lake were called all one reservation. In 1894 removal to White Earth was ended and a cut-off date for allotments was set. In 1896 report, White Earth and Leech Lake were listed as consolidated and White Earth, but not Leech Lake, was shown on the map of all reservations. In the 1897 report at p. 435 Leech was listed as ceded. Leech Lake was also listed as an agency rather than a reservation. In the 1898 report the

commission listed only White Earth as a reservation (p. 33). The Timber Report listed Leech as a diminished reservation. The Interior Report, p. 570 also listed Leech as ceded. In the 1899 report only White Earth was listed as a reservation (p. 33) and Leech was called a diminished reservation (p. 52). The above are just examples. They reflect the attitude of the Department of Interior. It also reflects the fact that at the time of the passage of he Nelson Act everyone thought most Indians would remove to White Earth. When it became clear by 1894 that many would not, it became necessary to create an agency at Leech Lake to deal with the Indians who had remained on allotments on the ceded reservation. This attitude continued in the above report. For example in 1926 the report states that "3/4 of the Minnesota Chippewa are off the reservations, so-called".

The attitude of the Interior to the Leech Lake Reservation is also shown in letters and opinions of the Secretary of the Interior as to the Leech Lake Reservation. A letter of May 9, 1899 allowed passage of school lands into state hands at Leech Lake. At the same time the Interior successfully opposed the State of Minnesota from taking school section at Red Lake (Minnesota vs. Hitchcock, 185 U.S. 373, 46 L. Ed. 954, 1902). As to hunting and fishing rights, the Interior Department, until Leech Lake No. 1 had always taken the view that Minnesota had jurisdiction over the Leech Lake Indians except on the allotment. The same opinion as to criminal jurisdiction was held. The foregoing was admitted at the Leech Lake No. 1 trial. This is in contrast to the department's views of jurisdiction at Red Lake which is summed up in Cohen, supra, at 285-86. The difference was that by the Nelson Act a portion of Red Lake remained unceded whereas Leech Lake was ceded. Thus, only the allotments at Leech Lake remained

Indian country within 18 USCA 1151 in the opinion of the department for well over half a century. It is clear that the long-held view of the Department of Interior was, that this reservation had been extinguished by the Nelson Act.

XX. THE STATE OF MINNESOTA'S VIEW.

The District Court also placed some reliance on what attitude Minnesota took toward the reservation. This may be relevant perhaps as estoppel. The District Court cited State vs. Jackson, 16 NW (2) 752, Minnesota 1944 as an example of this. That case held that Minnesota had no jurisdiction as to allotments on the Leech Lake Reservation. That is of course true. The District Court also received evidence that Minnesota had called Leech Lake a reservation on maps and had passed acts concerning that area. Again this is true. As to calling Leech Lake a reservation on some maps, this appears to be no more than a designation of a geographical area. As to non-allotted lands Minnesota has done the following at Leech Lake.

As stated before it has received lands under both the Swamp Acts and the School Land Act. As to political control and jurisdiction it has done the following since the Nelson Act. It has provided schools, welfare, roads, and all other normal functions of government. It has also taxed off the allotments. As to jurisdiction, it has exercised both civil and criminal jurisdiction over this area both before and after the passage of PL 280. It has exercised jurisdiction over all hunting and fishing within the non-allotted area. In other words for well over a half a century, Minnesota has asserted jurisdiction over this area. This can be compared to the unceded portion of the Red Lake Reservation where in a long series of cases it has been held that the State of Minnesota cannot tax, control hunting, control fishing, and exercise civil or criminal

jurisdiction over the Red Lake area because it is still a reservation.

The District Court in Leech Lake No. 1 found that Minnesota had shown recognition of a treaty right to hunt and fish and of the reservation by reference to M.S.A. 84.09-84.15. This Court can find no wording that could be construed as recognition of a treaty right. What is found is that these statutes sought to assist the Indians under a rational basis. It was based in part on a moral obligation to aid the Indian in an emergency situation.

In conclusion until Leech Lake No. 1 Minnesota had not recognized any treaty rights over the non-allotted portions of Leech Lake Reservation. Therefore there was no estoppel.

XXI. THE INDIAN POSITION AS TO THE LEECH LAKE RESERVATION.

Seldom is the Indian attitude towards a treaty discussed in cases of this nature. The reason is clear. There is usually little or no documentation of the Indians' position as to treaties or agreements. At the risk of distorting the true Indians' position some facts and conclusions may be drawn from the information which is available. There are two aspects of the Indian position relevant to this case. The first is what did the Indians intend to agree to in 1889. The second is what has been the Indian position since that time.

The first indication the Indians had that the Leech Lake Reservation might be ended was in the negotiations with the Northwest Commission in 1886 (Senate Executive Document 115, 49th Congress, Second Session, p. 95-132, Appendix M). The agreement signed by the Chippewa at that time called for complete removal to White

Earth. The promise of farms to replace hunting was agreed to. There was no question that they knew in 1886 that they had signed an agreement which would end their reservations. The Indians acknowledged throughout the negotiations that the old life was gone. The game had disappeared. The wild rice had been flooded by the dams. Money from the old treaties had run out. The simple fact was, because of the above factors the Indians were in poverty. They did not wish to leave Leech Lake but they could not survive on empty stomachs. Thus they signed the cession knowing that they were giving up Leech Lake. For three years nothing happened. None of the limited conditions changed. The report still showed poverty at Leech Lake.

The next contact the Leech Lake Tribes had with the Northwest Agreement was the coming of the Rice Commission. The Rice Commission had come to negotiate the Nelson Act. The Leech Lake Indians were reduced, as mentioned before, to digging snake root by 1888. The negotiations at Leech Lake referred to the fact that in 1886 they had signed an agreement to alleviate their poverty, but as yet had received nothing. Under those conditions the negotiations began. The negotiators stressed that the Indians should remove to White Earth (See Report of Rice Commission, p. 117-163). Many Indian speakers indicated that this would be done and some Indian speakers indicated they would stay at Leech Lake. Without question, the lack of subsistence was a factor in these decisions. During the negotiations (discussed previously) Rice made it clear that the allotments would be Indian Country but off the allotments the Indians would be subject to state law. The Rice Report, p. 140-141 showed that it was understood by the Indians that the effect of ceding Leech Lake meant that it was the end of the reservation.

Throughout the negotiations, Rice made it clear that the Nelson Act changed Indian lands into Indian allotments. It was made clear that once the allotments were left, the white men's law applied. The Indians were told that the effect of the Nelson Act was the same as the effect on the land ceded in the old treaties. The Indians knew they were subject to state law under those.

The Indians could not have failed to recognize that they were using the same words of cession as they had used before. They knew the effect of those words on other areas of land. The report shows that the Indians did in fact realize the importance of this cession. No one could anticipate the development of this area in future years. This was pointed out at p. 150-151 of the report. It was true the Indians had not been stopped from hunting freely on the 1855 cession area. But they did realize that the state would now control those areas and that it was no longer Indian country.

Continuing in time, by 1894 it became clear that the majority of the Indians would not remove from Leech Lake to White Earth. Although the reasons are not clear, factors had changed. As has been stated the Indians faced poverty in 1889. By 1894 conditions may have changed to the point that subsistence may have been made more possible. First, the Nelson Act was taking effect. By its terms it allowed up to $90,000 per year to be advanced to the Indians against future timber sales. Although this would amount to only somewhat over $10 per person (man, woman, or child), it may have been enough in that era to enable the Indians to subsist at Leech Lake rather than remove to White Earth. In addition, Congress was beginning to take action which resulted in payment for damages caused by the dams (to go only to the Leech Lake Indians) and for payments based on the 1847 treaty prob-

lems mentioned previously. By 1894 the Leech Lake Indians had received an appropriation of $150,000 in payment for damages caused by the dam. Timber cutting was proceeding under the various "dead and down" timber acts (See Appendix AA) and the Nelson Act. This led to employment in cutting timber for many Indians (see Fowler, A History of Minnesota, Vol. 4). It is possible (although there is no proof of this) that by this time the water at Leech Lake had stabilized and rice was beginning to re-establish itself on that lake. One or more of the above factors probably led to subsistence being provided at Leech Lake to the point that removal for the purpose of staying alive was no longer needed. It is indeed ironic that the Nelson Act, designed to effect the removal to White Earth may have provided the subsistence necessary to stay at Leech Lake.

The poverty never really ended at Leech Lake and new efforts were made to aid the Indians. The Minnesota Chippewa Tribe was created as a political body under 48 Statutes 984, approval recommended July 20, 1936 by Interior Department. This was the constitution of the Minnesota Chippewa Tribe under the Preamble of "the consolidated Chippewa Agency". That constitution gives no indication of remaining reservations. It contains no statement of jurisdiction off allotments. It contains no provision for a court system.

Pursuant to that constitution the corporate charter of the Minnesota Chippewa Tribe of the Consolidated Chippewa Agency was ratified on November 13, 1937. Again no mention was made of allotment jurisdiction for any court system.

As late as April 23-24, 1955 the Minnesota Chippewa Tribal leaders were not claiming that they had jurisdiction off the allotments at Leech Lake (Indian Tribes and

Treaties, Regional Conference, Reports on Current Tribal Affairs, p. 120-123). It was admitted at Leech Lake No. 1 that at that date no tribal code existed as to even the tribal lands.

During the entire period to and after PL 280, Minnesota had asserted criminal, civil, and game and fish jurisdiction over all but the allotted lands. There is no official record of any objection to this jurisdiction until Leech Lake No. 1. That is not to say that there were no suits brought by the Chippewa concerning this area. 69 Statutes 555, 1926 (Appendix BB) was passed to allow claims arising out of the Nelson Act. Under this act, or similar acts, the Chippewa had sought full payment for timber lands, the national forest lands, the homestead lands, and the school lands. In other words all but the tribal lands have been subject to law suits involving claims. In all suits during the period prior to 1969, the Indians sought to make claims for the loss of property rather than seeking the use of the property, as had been done at Red Lake. Not only did they fail to object to Minnesota jurisdiction, they actively lobbied for changes within the Minnesota Legislature (see 1955 conference report). At some point, claims based on loss of reservation and land within them, must necessarily be res adjudicata or estoppel, as to the question of whether the reservation still exists (see for example United States vs. Southern Ute Tribe, 402 U.S. 159, 28 L. Ed. (2) 695, 1971).

The Court is aware of the fact that several elderly Indians testified at Leech Lake No. 1 to the effect that they understood the Nelson Act to allow hunting within the reservation. Nor is the Court unaware that a similar feeling also exists among some local non-Indians who feel they have the right to hunt and fish without state interference. That feeling could no doubt have been fostered

by the fact that 60 years ago, no matter what statutes were on the books, no one really thought the laws as to hunting and fishing would be enforced in this area. Granting the honest conviction of some, that those rights survived, still no one objected to Minnesota jurisdiction. During this period the Red Lake Reservation was preserving its rights to possession both against the state and at least some members of the Minnesota Chippewa Tribe (Morrison vs. Wrork, 266 U. S. 481, 69 L. Ed. 394, 1925) who were seeking to force the allotment and sale of surplus lands at Red Lake. Yet, during the same period only money claims for damages, were being made by the Minnesota Chippewa Tribes. During this period non-Indians were acquiring property for the tourist industry and for personal use. One of the attractions for these acquisitions being the excellent hunting and fishing in the area. The lack of assertion of Indian authority to exclusive or concurrent use of this area certainly encouraged this development. It appears to this Court that the Indian assertions made at this late date, after having made and received monetary rights for these claims, must of necessity be faced with the equitable principle of estoppel when the rights of non-Indians must be considered.

XXII. DECISIONS CONCERNED WITH THE NELSON ACT.

As stated, Minnesota jurisdiction was not, until 1969, ever challenged as to the remainder of the ceded reservations or as to the ceded portions of Red Lake and White Earth. There have been several suits concerning the Nelson Act of 1889 and although we are not concerned with strict construction of land title, these cases interpret the Nelson Act as it applies here. Naganab vs. Hitchcock, 202 U. S. 473, 50 L. Ed. 1113, 1905, stated that the reservations had been ceded and that all tracts of land within

the reservations were held with title in the United States and therefore no suit could be brought to enjoin the disposition of the tracts. Johnson vs. Gearlds, supra, stated that liquor was still prohibited from the 1855 treaty area. It also stated that all right, title, and interest to all reservations except Red Lake and White Earth had been ceded. United States vs. Mille Lacs Band of Chippewa (treated the same as the Leech Lake Band under the Nelson Act), 229 U. S. 498, 57 L. Ed. 1299, 1913 stated at p. 1303 that all of the reservations except Red Lake and White Earth had been ceded in 1889 and that the cession was res adjudicata as to any past claim. United States vs. The State of Minnesota, 270 U. S. 181, 70 L. Ed. 539, 1926 held in dicta at p. 545 that the Chippewa had ceded all their reservations except White Earth. Wilbur vs. U. S. ex rel. Cadrie, 281 U. S. 206, 74 L. Ed. 809, 1930 held that the tribes still existed, although all of the land was ceded except White Earth, Red Lake, and the allotments held in trust. Westling vs. U. S., 60 Federal (2) 398, Circuit 1932, appeal dismissed 288 U. S. 590, 77 L. Ed. 969 held that the reservations existed only for purposes of selecting allotments. Chippewa Indians of Minnesota vs. U. S. (and the Red Lake Tribe), 301 U. S. 358, 81 L. Ed. 1156, 1937 expressly stated that the 10 reservations (those other than Red Lake and White Earth) were completely ceded (at p. 1162).

Although, strict land title does not affect the reservation status, only one conclusion can be drawn from these cases, that is, the reservations were extinguished.

XXIII. CONCLUSIONS AS TO TREATY RIGHTS.

This Court cannot accept the District Court's ruling as to treaty rights in Leech Lake No. 1. History does not support this conclusion. The various reports prior

to the Nelson Act do not support this conclusion. The Northwest Agreement does not support this conclusion. The unopposed amendment of allowing allotments at the home reservation does not support it. The Congressional Record does not support it. The wording of the Nelson Act itself does not support it. The Rice negotiations do not support it. The long-standing Department of Interior attitude that the reservation had been extinguished does not support it. The State of Minnesota's attitude does not support it. The previous Court decisions do not support it. The fact that claims have been made by the tribe itself as to all land except the allotments within the reservation does not support it. The treatment by Congress after the Nelson Act in opening for homestead, and creation of the National Forest does not support it. There simply is no question that before, during, and after the Nelson Act no one believed that the reservation still survived. It remained, as at Coleville North, a geographical area in which allotments were taken. Because no reservation survived no jurisdiction remained under 18 USCA 1151 other than on the allotments.

As was stated in United States vs. Choctaw Nation, 179 U. S. 494, 45 L. Ed. 291, at p. 306, 1900 a Court cannot re-write a treaty, it cannot determine fairness, it cannot create new intention for the parties, it must stop where the treaty stops, and it cannot make a political question a legal question. This treaty did not reserve an in common right such as we have in the Payupa Tribe case, while ceding the reservation. This case is not like the Winens case wherein the reservation remained Indian country. This case is an Egan case wherein there is no Indian country. Because there is no treaty right to hunt and fish in this area M.S.A. 97.431 must be viewed in light of equal protection standards under the Federal and State Constitutions.

XXIV. FEDERAL PRE-EMPTION.

The Federal Government has over the years had special powers over the Indian nation derived from various provisions of the United States Constitution. This developed into the guardianship and wardship relationship. This power was exclusively and reserved from the States. It was this special power derived from the constitution which enabled the Congress to pass legislation pertaining only to Indians without running afoul of the Equal Protection Provision of the Federal Constitution. Because this power was exclusive to the Federal Government and because it was reserved by the Federal Government, the States had no interest or jurisdiction over that federal legislation. Thus, some special right which the Indians had was of no concern to the states and therefore did no violence to the state's equal protection provision because as to the Indian reserved rights, the state had nothing to protect.

Congress could exercise its powers over the Indians in basically two ways. The first was wardship. Under this power, it could, for example, open a reservation for white settlement as had been done at South Coleville. In that case, Indian jurisdiction remained and the State had no power to regulate. But Congress also had a second power which was to extinguish Indian rights or title. This was done in Coleville North, and in that case, except for allotments, jurisdiction went to the state. The problem is, that when the state received this jurisdiction it did not have the special relationship under the constitution with the Indians. In other words, once Congress extinguished an Indian right it passed to the State, and legislation by the State became subject to all of the incidents of equal protection under both the Federal and State Constitutions. At that point there is no longer a question

of Indian treaty rights, but a question of legislation by race, and race within a particular geographical area. When Congress does extinguish Indian rights, which is question of law for the courts to determine, the state does not have the power to pass legislation that the right still exists, thereby infringing on equal protection of its citizens. Thus, the question of whether treaty rights still exist is for Congress to determine and whether a particular act did extinguish these rights are for the Courts to determine. A state cannot take away Indian title nor may it grant Indian title because as to that issue the power of Congress is supreme (Oneida Indian Nation of New York State vs. The County of Oneida, New York and All, 39 L. Ed. (2) 73, 1974). In the present case, at Leech Lake No. 2, it was stated that M.S.A. 97.431 was not a treaty, but rather it was simply an agreement designed to settle all law suits. This may have been the desired effect but neither a court or a state may change or make a treaty with the Indians. This power rests solely with congress. For example in the Puyupa Tribe cases, supra, the State can legislate to prevent interference with a reserved right of the Indians, but it may not legislate beyond that reserved right without violating equal protection.

While it is true that the present agreement was signed by a representative of the federal government this adds nothing when Congress had extinguished the Indian title. Thus if the 1889 Act extinguished the right to hunt and fish neither Congress nor the Federal Government has any interest in that right.

Assuming the position taken herein to be incorrect, then M.S.A. 97.431 violates the principle that the Federal Government has pre-empted the field of Indian law. These are rights reserved to the Congress and the Indians cannot bargain them away, without the consent of Congress. In

the present case if the hunting and fishing rights survive the Nelson Act, then unless some form of estoppel is used, the Court has been unable to find any other act of Congress which extinguished what was at the time of the Nelson Act, an exclusive right to hunt and fish. The state would not have the power to limit commercial fishing because, it cannot take away Indian rights. This is true whether or not the Indians agree (Oneida Nation vs. New York, supra). Thus, neither the Indians or the State of Minnesota had the authority to enter into any agreement that would limit or control commercial fishing.

One additional vexing problem faces the Court herein, and upon the determination of this issue the matter could or possibly should be decided. M.S.A. 97.431 and the commissioners regulations (Appendix A) pursuant thereto, changed the boundary lines of the Leech Lake Reservation from those lines established by the Nelson Act and the acts subsequent thereto. These changes by the Nelson Act, subsequent congressional acts and M.S.A. 97.431 are shown on Appendix K. The place of arrest herein occurred in an area added to the reservation by M.S.A. 97.431, pursuant to the Minnesota-Chippewa agreement.

There can be no question that congress has the only authority to determine reservation boundary lines. (25 USCA 3980). A representative of the Federal Government Administrative Division cannot make such changes. (Healing vs. Jones, 210 Fed. Supp. 125 D. C. Arizona 1962). If the area in 1889 was not a part of the reservation, Minnesota, absent a formal retrocession, approved by congress, could not place this land back into the reservation. (Robinson vs. Sigler, 187 NW (2) 765, appeal dismissed 404 U.S. 987, 30 L. Ed. (2) 549, 1971).

In summary, only congress can create or take away treaty rights. These rights were established in 1889 and

cannot now be changed by either the tribe or the state. In particular, the boundaries within which the Indian jurisdiction remains is not subject to agreement by State or tribe. Since this portion of the agreement cannot stand absent congressional approval, and since no part of the Minnesota-Chippewa Tribe agreement is severable, the entire agreement fails and the conviction of these defendants cannot stand.

XXIII. FINAL COMMENTS.

As stated, this Court finds no treaty right to hunt and fish reserved to the Minnesota Chippewa Tribe at the Leech Lake Reservation. Thus, equal protection arguments must be determined solely on a rational basis theory in order to comply with the Federal and State Equal Protection Provisions. M.S.A. 97.431 clearly does not attempt to justify itself on any rational basis. It splits jurisdiction solely on the basis of race (and includes only some members of that race) and geographical area. It provides for different sets of laws and different courts for the various areas. It places a direct tax on all races other than the Minnesota Chippewa with the benefit of that tax going only to the Minnesota Chippewa. It excludes all races from activities which only the one race may take part in. As such, M.S.A. 97.431 goes far beyond what any other statute, Federal or State, has ever done as to race relations. Even with respect to the Indian race, the policy of Congress from the end of removal days has been to assimilate. Although PL 280 still reserved hunting and fishing rights, those already gone were presumed assimilated. We cannot now say that the equal protection clauses of the State and Federal Constitution permits separation rather than assimilation. Clearly that is what M.S.A. 97.431 has done and as such in the absence

of a treaty right, violates the equal protection clauses of both the Federal and State Constitutions.

It is apparent that this memorandum does not support the Court's finding of guilt as to these defendants. The defendants presented this case to the Court as a test of the validity of M.S.A. 94.431, and the Court feels that the issues raised therein are of such an important and uncertain nature that appellate review is necessary. In order to achieve this review, a finding of guilt was made although the Court feels it is not justified, for neither the State or the defendants could appeal from a not guilty finding.

J.E.P.

APPENDIX B

No. 122 | Cass County | Rogosheske, J.
Took no part,
Wahl, J.

46473, 46478, 46479
State of Minnesota,
Respondent,

vs.

C. John Forge, Jr.,
Appellant,

James Olson and Richard C. Larsen,
Appellants,

Endorsed
Filed October 14, 1977
John McCarthy, Clerk
Minnesota Supreme Court

SYLLABUS

Minn. St. 97.431, which requires all persons who are not members of the Minnesota Chippewa Tribe to pay a special licensing fee for the privilege of fishing within the Leech Lake Reservation, is not an unconstitutional denial of equal protection to non-Indians, since it is a rational compromise between unextinguished treaty fishing rights held by the tribe and the legitimate interests of the state in regulating fishing for the benefit of all citizens.

Affirmed.

Considered and decided by the court en banc.

OPINION

ROGOSHESKE, Justice.

On this appeal, defendants seek to overturn their convictions for fishing on the Leech Lake Indian Reservation without a supplementary reservation stamp affixed to their Minnesota fishing licenses in violation of Minn. St. 97.431. Defendants principally contend that this statute, which requires all persons who are not members of the Minnesota Chippewa tribe to pay a special licensing fee for the privilege of fishing within the reservation, is an unconstitutional denial of equal protection to non-Indians. For reasons which follow, we hold that members of the Minnesota Chippewa Tribe retain unextinguished treaty rights to fish on Leech Lake and that § 97.431 is a rational compromise between these rights and the legitimate interest of the State of Minnesota to regulate fishing within its borders. We therefore hold that § 97.431 has not denied defendants equal protection under the law and affirm their convictions.

On June 22, 1973, defendants C. John Forge, Jr., James Olson, and Richard C. Larsen fished at Leech Lake with valid fishing licenses issued by the State of Minnesota for the year 1973 but without the Leech Lake Reservation stamp affixed thereto.[1] None of the defendants were members of the Minnesota Chippewa Tribe, and all of them knew that it was a violation of § 97.431 to fish at Leech Lake without the reservation stamp. Defendants were ar-

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1. The Leech Lake Reservation covers an area of 588,684 acres and is located within Itasca, Cass, and Beltrami Counties. Approximately 80 percent of this land is now owned by Federal, state, and county governments, with the 295,000-acre Chippewa National Forest occupying the largest single portion of the reservation. Approximately 27,000 acres of the remaining area is owned either by individual Indians in fee or the Minnesota Chippewa Tribe.

rested by a state conservation officer and subsequently were found guilty of fishing illegally by the County Court of Cass County on August 3, 1973. An appeal was taken to the Cass County District Court in which defendants' convictions were affirmed on November 7, 1975.

Underlying these relatively simple facts is a long and acrimonious history of litigation concerning fishing and hunting rights in the Leech Lake area. In 1969, the Leech Lake Band of Chippewa Indians (hereinafter Band) brought suit in Federal District Court against the commissioner of natural resources of the State of Minnesota, seeking a declaratory judgment that the Band had an unextinguished and exclusive treaty right to hunt, fish, trap, and gather wild rice within the boundaries of the Leech Lake Reservation and that they could exercise that right free of state control. A similar suit, which was basically sympathetic to the claims made by the Band, was subsequently brought by the United States government on behalf of the entire Minnesota Chippewa Tribe[2] and was joined with the former actions. These consolidated cases generated widespread public concern, for it was commonly believed by non-Indian sportsmen and resort owners in the Leech Lake area that, if the Indians had an exclusive right to fish in Leech Lake, the valuable fishing resources could become depleted through commercial exploitation, resulting in disastrous consequences to the tourist industry. After vigorous and protracted litigation, the Federal District Court determined that the Band had an unextinguished but nonexclusive treaty right to take fish from Leech Lake free of state regulations. This conclusion was predicated on the finding that the Chippewa Indians had entered into treaties with

2. The Minnesota Chippewa Tribe is a Federally constructed Indian tribe organized under the Wheeler-Howard Act of 1934, 25 USCA, § 461 et seq. This tribe is the aggregate of six of the historic Chippewa bands, including the Leech Lake Band.

the United States government in 1855 and 1867 reserving to themselves the rights to hunt, fish, trap, and gather wild rice upon the public lands and waters of the reservation. Contrary to the claims made by the state, the Federal District Court further held that the Nelson Act of 1889, 25 Stat. 642,[3] had not disestablished the Leech Lake Reservation, and as a consequence, the Band's reserved treaty rights had not been abrogated. See, Leech Lake Band of Chippewa Indians v. Herbst, 334 F. Supp. 1001 (D. Minn. 1971), (hereinafter referred to as Leech Lake I).

Following the Leech Lake I decision, the parties appealed and cross-appealed on the issue of the Band's alleged exclusive right to regulate fishing independent of state control in Leech Lake. At that stage of the litigation, a group called the Leech Lake Citizens Committee, represented principally by present-defendant C. John Forge, filed a motion with the Eighth Circuit Court of Appeals seeking to intervene on behalf of private non-Indian sportsmen and property owners in the lake area. Although this motion was denied, the court did grant the Leech Lake Citizens Committee permission to file a brief amicus curiae.[4]

While the Eighth Circuit appeal was still pending, the parties and the governor of Minnesota entered into a tentative settlement agreement on January 26, 1973. On this basis, the Eighth Circuit remanded the matter to the Federal District Court for entry of a consent judgment. Under the major terms of this agreement, members of the Minnesota Chippewa Tribe were exempted from state regulation within the reservation as to fishing, hunting, trapping and the gathering of wild rice. The Band agreed to prohibit

3. See, I Kappler, Laws and Treaties, p. 301.

4. This sequence of events is more fully described in Leech Lake Citizens Committee v. Leech Lake Band of Chippewa Indians, 355 F. Supp. 697 (D. Minn. 1973).

commercial hunting and fishing so as to conserve these resources for the tourist industry and to regulate the fishing activities of its members according to the provisions of its own tribal conservation code.[5] In return, the state agreed to collect for the benefit of the Band a supplementary licensing fee from non-Indians for the right to hunt, trap, and fish in this area. An established committee comprised of members of the Band was given the right to determine the amount of the supplementary fee, provided that it did not exceed one-half the sum charged by the state for hunting, trapping, and fishing licenses. The settlement reached by the parties was "expressly conditioned upon the adoption by the Legislature, at the 1973 session thereof, of legislation to be submitted by the Governor to effectuate the terms of [the] Agreement."[6]

After extensive hearings were conducted, in which Forge and other interested citizens participated, Minn. St. 97.431 was finally enacted into law on April 23, 1973. Subdivision 3 of this statute expressly ratified the previously executed settlement agreement, and subd. 4 authorized the commissioner of natural resources to set up the administrative machinery needed for collection of the special licensing fee.[7] On June 18, 1973, the Federal District Court

5. The tribal conservation code is in most respects similar to the state fish and game laws.

6. During the time that the settlement negotiations and legislative hearings were taking place, the Leech Lake Citizens Committee attempted to enjoin the proceedings by bringing an action in Federal District Court. On March 28, 1973, the court dismissed the action, finding that the court was "without authority to enjoin the Legislature from ratifying the agreement." Leech Lake Citizens Committee v. Leech Lake Band of Chippewa Indians, 355 F. Supp. 697, 699 (D. Minn. 1973).

7. Since the inception of the special licensing fee agreement, the Band has never charged more than $1 for the reservation stamp, which is substantially less than one-half the sum charged by the state for hunting and fishing licenses.

incorporated the settlement agreement into a consent judgment, which effectively terminated the Leech Lake I litigation.[8]

According to the terms of § 97.431, the special licensing requirements for fishing in Leech Lake became effective on June 22, 1973,[9] and not coincidentally, defendants were arrested on the same date. Both defendants and the trial judge viewed the prosecution from the start as a test case challenging the constitutionality of § 97.431. Notwithstanding the express holding in Leech Lake I, which found that the Nelson Act had not extinguished the Band's treaty rights, the trial judge painstakingly reconsidered the congressional history and intent behind this act. Based upon this analysis, the trial court concluded that the Nelson Act had completely terminated the Leech Lake Reservation, with the result that any treaty rights claimed by the Band to hunt, fish, trap, and gather wild rice were nonexistent. It necessarily followed, in the opinion of the trial judge, that § 97.431 denied defendants equal protection of the law. For the sole purpose of permitting the present appeal to this court, the district court affirmed defendants' convictions entered by the county court.

Defendants assert as their principal claim that § 97.431 denies non-Indians equal protection under both the Fourteenth Amendment and Minn. Const. art. 1, § 2, since the statute exempts all members of the Minnesota Chippewa Tribe from paying a special licensing fee and further provides that the monies collected for the special fee by the

8. Prior to entry of the consent judgment, another attempt was made by Forge and other members of the Leech Lake Citizens Committee to intervene in the Leech Lake I lawsuit. This motion was denied by the Federal District Court and summarily affirmed by the Eighth Circuit in Leech Lake Area Citizens Committee v. Leech Lake Band of Chippewa Indians, 486 F. 2d 888 (8 Cir. 1973).

9. See, L. 1973, c. 124, § 2.

state are to be paid to the Band.[10] Closely related to this argument is the claim that § 97.431 is special legislation prohibited by Minn. Const. 1974, art. 4, § 33.[11] As correctly observed by the trial judge, the merit of these allegations hinges directly on whether the Band retains unextinguished treaty rights to fish in Leech Lake and whether these rights, if found to exist, were terminated by the Nelson Act.

Prior to passage of the Nelson Act, two significant treaties were negotiated with the Chippewa Indians which in large part established the boundaries of what is now known as the Leech Lake Reservation. In the Treaty of February 22, 1855, 10 Stat. 1165,[12] the Chippewa agreed to "cede, sell, and convey to the United States all their right, title, and interest in, and to, the lands now owned and claimed by them, in the Territory of Minnesota." By this treaty and the Treaty of March 19, 1867, 16 Stat. 719,[13] the Indians were granted in return a number of reservations, one of which was the Leech Lake Reservation.[14]

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10. In an amicus brief filed by the Crane Clan, it is argued that § 97.431 also denies Chippewa Indians who are not members of the Minnesota Chippewa Tribe as well as members of other tribes equal protection of the law. The Crane Clan is one of 27 clans that originally constituted the historic Chippewa Tribe. Not all of these clans, however, comprise the Federally constructed Minnesota Chippewa Tribe, which was recognized under the Wheeler-Howard Act of 1934. See, footnote 2, *supra*. We decline to consider this issue on the present appeal, since the entire thrust of the trial court proceedings was directed to the constitutionality of § 97.431 with respect to non-Indians.

11. Under the restructured constitution, enacted subsequent to defendants' prosecutions, the special legislation prohibitions are contained in Minn. Const. art. 12, § 1.

12. See, II Kappler, Laws and Treaties, p. 685.

13. Id. 974.

14. Other less significant treaties and executive orders during this period were: Treaty of March 11, 1863, 12 Stat. 1249; Treaty of May 7, 1864, 13 Stat. 693; and executive orders of November 4, 1873, October 29, 1873, and May 26, 1874 (I Kappler, Laws and Treaties, pp. 851, 854).

Under these treaties the Band retained an unextinguished right to hunt and fish, as the trial court expressly found.[15]

In 1889, Congress enacted the Nelson Act. The essential provisions of this act provided for the establishment of a commission, later known as the Rice Commission, to negotiate with the Chippewa "for the complete cession and relinquishment in writing of all their title and interest in and to all the reservations of said Indians in the State of Minnesota, except the White Earth and Red Lake Reservations." The Indians, upon agreement of two-thirds of all adult males, were to be relocated to the White Earth Reservation and granted specific allotments of real property in severalty.[16] Sales of the extensive agricultural and timber lands ceded were then to be conducted by the Federal government, and the proceeds of these sales were to be held in trust by the government for the benefit of the Indians. See, 4 Folwell, History of Minnesota, pp. 219 to 226. While the ostensible purpose of the Nelson Act was to relocate the Chippewa to the White Earth Reservation, § 3 of the act expressly provided:

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15. Defendants have attempted both in their reply brief and during oral argument to establish that Congress intended by the Treaty of 1855 to terminate completely all Chippewa claims to land in the Territory of Minnesota, with the result that all Indian treaty rights to hunt and fish were abolished. This argument is based in large part on language found in 10 Stat. 598, the enabling legislation for the Treaty of 1855, which authorized the President to negotiate with the Chippewa for the complete cession of all their land in the Territories of Wisconsin and Minnesota. But to hold, as defendants now urge, that the Chippewa completely relinquished all of their land by virtue of 10 Stat. 598, would mean that every Indian reservation in the State of Minnesota has been a legal nullity for over a century. We are persuaded that both the Treaty of 1855 and subsequent treaties, which established vast Indian reservations within this state, clearly refute this contention.

16. Prior to the Nelson Act, Congress had created the Northwest Commission in 1886, which had unsuccessfully tried to negotiate with the Indians for their removal to the White Earth Reservation. See, 24 Stat. 44. A more detailed history of this commission's activities is contained in 4 Folwell, History of Minnesota, pp. 198 to 219.

"* * * That any of the Indians residing on any of said reservations may, in his discretion, take his allotment in severalty under this act on the reservation where he lives at the time of the removal herein provided for is effected, instead of being removed to and taking such allotment on White Earth Reservation." 25 Stat. 643.[17]

Although the disestablishment effect of the Nelson Act is not free from doubt, we are convinced after a review of the voluminous authorities cited to us that the act did not terminate the Leech Lake Reservation.[18] It follows that the Band, contrary to the finding of the trial court, retains unextinguished treaty rights to fish, hunt, trap, and gather wild rice in this area.[19]

This conclusion rests on our prior holding in State v. Jackson, 218 Minn. 429, 16 N. W. 2d 752 (1944), where we reviewed the conviction of a member of the Minnesota Chippewa Tribe for shooting partridge out of season on an allotment not owned by him but located within the Leech Lake Reservation. We first held that under the previously discussed treaties the Indians had an "ancient and immemorial right to hunt and fish" within "Indian country" without state regulation. 218 Minn. 429, 16 N. W. 2d 755. Since there was no congressional definition of

17. See, I Kappler, Law and Treaties, p. 303.

18. It should be noted that regardless of congressional intent behind the Nelson Act, few Indians ever relocated to the White Earth Reservation. In 1890, Commissioner Rice reported to the President that many Indians were distrustful of the act because of previous unfair treatment by the Federal government. See, H. R. Exec. Doc. No. 247, 51st Cong., 1st Sess. (1890). By 1894, it was estimated that only 775 Indians out of a total population of 4,000 had moved to White Earth. 4 Folwell, History of Minnesota, p. 235.

19. For purposes of the present appeal, it is unnecessary for us to decide whether these rights are exclusive or nonexclusive.

"Indian country" under then existing law, we considered prior decisions of the United States Supreme Court that had construed this term and concluded that trust allotments located within the Leech Lake Reservation were a part of Indian country.[20] Members of the Minnesota Chippewa Tribe were thus immune from prosecution under the state game laws.

Our initial opinion in the Jackson case did not discuss the possibility that the Leech Lake Reservation had been disestablished under the Nelson Act. Upon the state's motion for reargument, we addressed this question as found that, since § 3 of the act gave the Indians the option of remaining at Leech Lake rather than moving to White Earth, the Leech Lake Reservation remained intact.[21] The only portion of this land that was no longer a part of the reservation was the residue remaining after the Indians had taken their allotments in severalty.

We are further persuaded that, to the extent the Nelson Act is unclear in expressing congressional intent to terminate the Leech Lake Reservation, this ambiguity should not be resolved to the prejudice of the Indians.

20. Subsequent to the Jackson decision, Congress defined "Indian country" by 18 USCA, § 1151. Thereafter, in 1953, P. L. 83-280 was enacted which extended state criminal and civil jurisdiction to certain offenses and actions arising in Indian country. The criminal jurisdiction provisions are now codified in 18 USCA, § 1162, and the civil jurisdiction provisions are contained in 28 USCA, § 1360. It is interesting to note that 18 USCA, § 1162(b), provides that Indians are not to be deprived of any "immunity afforded under Federal treaty, agreement, or statute with respect to hunting, trapping, or fishing or the control, licensing, or regulation thereof."

21. More recently, the United States Supreme Court has held that the mere fact that Indians were granted allotments in order to permit sale of reservation lands to non-Indians does not necessarily mean that Congress intended to terminate the reservations. See, Mattz v. Arnett, 412 U. S. 481, 93 S. Ct. 2245, 37 L. ed. 2d 92 (1973).

As has been repeatedly recognized by the United States Supreme Court, "statutes passed for the benefit of dependent Indian tribes or communities are to be liberally construed, doubtful expressions being resolved in favor of the Indians." Alaska Pacific Fisheries v. United States, 248 U. S. 78, 89, 39 S. Ct. 40, 42, 63 L. ed. 138, 141 (1918). Accord, Bryan v. Itasca County, Minnesota, 426 U. S. 373, 96 S. Ct. 2102, 48 L. ed. 2d 710 (1976); Antoine v. Washington, 420 U. S. 194, 95 S. Ct. 944, 43 L. ed. 2d 129 (1975). This canon of construction is reflective of the fact that treaties and statutes are "not a grant of rights to the Indians, but a grant of rights from them—a reservation of those not granted." United States v. Winans, 198 U. S. 371, 381, 25 S. Ct. 662, 664, 49 L. ed. 1089, 1092 (1905). Had Congress intended to terminate completely the Leech Lake Reservation and the right of the Chippewa to fish thereon, we believe that it could have, and would have, expressed this intention with more definiteness and, in all likelihood, would not have permitted the Band, by § 3 of the Nelson Act, to continue to settle within the boundaries of the reservation.[22]

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22. A growing body of Federal law has also recognized that Indians may retain unextinguished treaty rights to hunt and fish even when their reservations have been terminated by statute. In the leading case of Menominee Tribe v. United States, 391 U. S. 404, 88 S. Ct. 1705, 20 L. ed. 2d 697 (1968), the United States Supreme Court held that the Menominee Tribe of Indians retained their right to hunt and fish notwithstanding the fact that the Menominee Indian Termination Act of 1954, 25 USCA, § 891 to § 911, had terminated their reservation. In the opinion of the court, Congress could not extinguish pre-existing game rights under the treaty without using express statutory language to that effect. See, also, Kimball v. Callahan, 493 F. 2d 564 (9 Cir.), certiorari denied, 419 U. S. 1019, 95 S. Ct. 491, 42 L. ed. 2d 292 (1974); 4 American Indian L. Rev. 121. Although it is unnecessary for us to resolve the present appeal on these grounds, we note that the Nelson Act makes no mention of abolishing Chippewa game rights in the Leech Lake area. It would certainly be difficult to infer from this silence that Congress intended to deprive the Chippewa of fishing rights which, at the time the Nelson Act was passed, were crucial to their continued survival.

Given the continued existence of Indian treaty rights to fish, hunt, trap, and gather wild rice at Leech Lake, we have little difficulty in finding that § 97.431 is not violative of either state or Federal equal protection standards or the prohibition against special legislation contained in Minn. Const. 1974, art. 4, § 33.[23] In reviewing equal protection challenges to legislative classifications, we have consistently upheld statutory differentiations where the classification has some natural and reasonable basis. Blue Earth County Welfare Dept. v. Cabellero, 302 Minn. 329, 225 N. W. 2d 373 (1974); Schwartz v. Talmo, 295 Minn. 356, 205 N. W. 2d 318, appeal dismissed, 414 U. S. 803, 94 S. Ct. 130, 38 L. ed. 2d 39 (1973). Section 97.431 was enacted for the primary purpose of effecting a compromise between the Band, which claimed an exclusive treaty right to take fish from Leech Lake, and the state, which argued on behalf of all Minnesota citizens that the Indians were not immune from fish and game laws. The reconciliation achieved by the statute recognized only a nonexclusive Indian right to fish in Leech Lake, and in return the Band was permitted to charge a special licensing fee. The practical effect of this agreement was to preserve the valuable fishing resources found at Leech Lake while at the same time giving recognition to and compensation for historic treaty rights held by the Band. We therefore hold that the classifications created under § 97.431 were rationally related to resolving the competing claims advanced by the parties in Leech

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23. The standards of the equal protection clause of the Fourteenth Amendment are synonymous with the standards of equality under Minn. Const. art. 1, § 2, and Minn. Const. 1974, art. 4, §§ 33, 34. See, Minneapolis Federation of Teachers v. Obermeyer, 275 Minn. 347, 147 N. W. 2d 358 (1966).

Lake I.[24] For similar reasons, defendants cannot successfully seek to overturn their convictions on the ground that § 97.431 is special legislation prohibited by Minn. Const. 1974, art. 4, § 33.

Defendants finally contend that § 97.431, subd. 3, by ratifying the settlement agreement reached in Leech Lake I, permits an unconstitutional delegation of legislative power in contravention of Minn. Const. art. 3, § 1. In particular, defendants maintain that the establishment of the special licensing fee may not be delegated to the reservation business committee of the Band, which under the terms of the agreement is authorized to set this fee annually in an amount not to exceed 50 percent of the state resident

24. Even in the absence of treaty rights, the United States Supreme Court has frequently upheld legislation that singles out Indians for particular and special treatment. See, Morton v. Mancari, 417 U. S. 535, 94 S. Ct. 2474, 41 L. ed. 2d 290 (1974); McClanahan v. Arizona State Tax Comm. 411 U. S. 164, 93 S. Ct. 1257, 36 L. ed. 2d 129 (1973).

25. One minor complication with the above analysis is the fact that defendants were arrested while fishing in Sucker Bay of Leech Lake, which may not have been within the original boundaries of the reservation set by the Nelson Act and prior treaties. Although the trial court's findings are extremely cloudy on this issue, we find that § 97.431 does not deny defendants equal protection even if the settlement agreement reached in Leech Lake I extended the boundaries of the restricted fishing area to include all of the surface water area of Leech Lake. It should be obvious that enforcement of the agreement would be totally unmanageable if fishermen were required to pay a special licensing fee for fishing in some areas of the lake and not in others. The classifications created by § 97.431 are thus rationally related to preventing "an impractical pattern of checkerboard jurisdiction" that would make enforcement of the agreement impossible. Cf. Seymour v. Superintendent of Washington State Penitentiary, 368 U. S. 351, 358, 82 S. Ct. 424, 428, 7 L. ed. 2d 346, 351 (1962).

license fees.[26] For two reasons, this argument is not persuasive. The Band's authority to determine the special licensing fee can first be construed to be at least partially derived from treaty rights that are separate and distinct from delegations of legislative power. Secondly, the legislature is constitutionally prohibited only from delegating its exclusive power to enact a complete law. When an administrative body, such as the reservation business committee, is only empowered to determine those circumstances that will make a statute operative, the legislature has not unconstitutionally delegated its authority. Anderson v. Commissioner of Highways, 267 Minn. 308, 126 N. W. 2d 778, 9 A. L. R. 3d 746 (1964); Lee v. Delmont, 228 Minn. 101, 36 N. W. 2d 530 (1949). Since the settlement agreement ratified by § 97.431 restricts the Band from setting the special licensing fee in excess of 50 percent of the state resident fee, we find that the legislature has not abdicated its exclusive power to enact law.

Affirmed.

MS. JUSTICE WAHL, not having been a member of this court at the time of the argument and submission, took no part in the consideration or decision of this case.

26. Defendants also raise the issue of unconstitutional delegation of legislative power relating to a settlement agreement provision concerning the promulgation of regulations to control harvesting of wild rice and a provision which provides that disputes over the enforcement of the agreement are to be settled by arbitration. We have carefully reviewed these issues and find them to be without merit.

APPENDIX C

MEMORANDUM OF AGREEMENT AND SETTLEMENT

WHEREAS, the signatories hereto are parties to that certain lawsuit pending before the United States District Court for the District of Minnesota, Fourth Division, entitled *Leech Lake Band of Chippewa Indians, et al.* v. *Robert L. Herbst,* No. 3-69 Civ. 65 and *United States of America* v. *State of Minnesota,* No. 3-70, Civ. 228; and

WHEREAS, the signatories hereto desire to compromise and settle the disputes between and among them with respect to the issues in the above entitled litigation and all other issues which affect the hunting and fishing rights of the members of the Leech Lake Band of Chippewa Indians in Minnesota, consistent with sound conservation principles and full recognition of all the rights of all parties hereto; and

WHEREAS, the signatories hereto have reached an agreement which is in the best interest of all the parties hereto and all the citizens of Minnesota

NOW, THEREFORE, in consideration of the agreements herein contained, the parties agree as follows:

I.

Definitions

For purposes of this Agreement, the following expressions shall have the meanings assigned to them respectively.

A. "The Band" means the Leech Lake Band of Chippewa Indians.

B. "Band member" means an Indian duly enrolled in the Band pursuant to the regulations of the Band and of the Minnesota Chippewa Tribe.

C. "Tribal member" means a duly enrolled member of the Minnesota Chippewa Tribe who is not a Band member.

D. "RBC" means the Reservation Business Committee of the Leech Lake Band of Chippewa Indians.

E. The "Reservation" means the Leech Lake Reservation described as follows and depicted graphically on the map attached hereto marked Exhibit A:

Leech Lake Indian Reservation Boundary Description

Beginning at a point on the Mississippi River, opposite the mouth of the Wanoman River (Vermillion River in Cass County), as laid down on Sewell's map of Minnesota; thence north to a point two miles further north than the most northerly point of Lake Winnibigoshish; thence west to the range line between ranges 25 and 26 West; thence north on said range line to the twelfth standard parallel; thence west on said standard parallel to the range line between Ranges 28 and 29 West; thence south on said range line to the High-Water Mark on the north shore of Dixon lake; thence southerly along the High-Water Mark on the easterly shore of Dixon Lake to the High-Water Mark on the right bank (looking downstream) of the Third River at its outlet from Dixon Lake; thence southerly along the High-Water Mark on the right bank (looking downstream) of the Third River to a point two miles further north than the most northerly point of Lake Winnibigoshish; thence west

to a point two miles west of the most westerly point of Cass Lake; thence south to the High-Water Mark on the left bank (looking downstream) of the Kabekona River; thence southeasterly along the High-Water Mark on the left bank (looking downstream) of the Kabekona River to its mouth at Kabekona Bay of Leech Lake; thence easterly along the High-Water Mark on the north shore of Kabekona Bay of Leech Lake to Walker Bay of Leech Lake; thence northeasterly along the High-Water Mark of Walker Bay of Leech Lake to the easterly extremity of Sand Point of Leech Lake, thence southerly through Walker Bay of Leech Lake to the most southern point of Leech Lake (said point being the southwest corner of Government Lot 4 of Section 11, Township 141 North, Range 31 West); thence in a direct line to the southeast corner of Government Lot 6 of Section 32, Township 141 North, Range 27 West; thence northerly along the High-Water Mark on the west shore of Inguadona Lake to the High-Water Mark on the right bank (looking downstream) of the Little Boy River at its outlet from Inguadona Lake; thence northerly along the High-Water Mark on the right bank (looking downstream) of the Little Boy River to its inlet into Boy Lake; thence northerly through Boy Lake by the shortest water route to the High-Water Mark on the right bank (looking downstream) of the Little Boy River at its outlet from Boy Lake; thence northerly and westerly along the High-Water Mark on the right bank (looking downstream) of the Little Boy River to its mouth at Boy Bay of Leech Lake; thence in a direct line to the southern extremity of Sugar Point of Leech Lake; thence northeasterly along the High-Water Mark of Boy Bay of Leech Lake to the range line between Ranges 28 and 29 West; thence

north on said range line to the High-Water Mark on the southerly shore of Waboose Bay of Leech Lake; thence northerly along the High-Water Mark of Waboose Bay of Leech Lake to the High-Water Mark on the right bank (looking downstream) of the main channel of the Leech Lake River, as it now exists, at its outlet from Waboose Bay of Leech Lake; thence easterly along the High-Water Mark on the right bank (looking downstream) of the main channel of the Leech Lake River, as it now exists, to its intersection with the original channel of the Leech Lake River, said intersection being approximately 4500 feet west of the inlet of the main channel into Mud Lake as it now exists; thence along the High-Water Mark on the right bank (looking downstream) of the original channel of the Leech Lake River in an easterly and northerly direction to its inlet into Mud Lake; thence southerly and easterly along the High-Water Mark of Mud Lake to the inlet of the Bear River; thence northerly along the High-Water Mark of Mud Lake to the High-Water Mark on the right bank (looking downstream) of the main channel of the Leech Lake River, as it now exists, at its outlet from Mud Lake; thence easterly along the High-Water Mark on the right bank (looking downstream) of the main channel of the Leech Lake River, as it now exists, to its junction with the High-Water Mark on the right bank (looking downstream) of the main channel of the Mississippi River; thence along the High-Water Mark on the right bank (looking downstream) of the main channel of the Mississippi River to the mouth of the Wanoman River (Vermillion River in Cass County); thence northeasterly across the Mississippi River to the point of beginning.

Also beginning at a point north of a point on the Mississippi River, opposite the mouth of the Wanoman River (Vermillion River in Cass County), as laid down on Sewell's map of Minnesota, where the section line between Sections 14 and 11, and 10 and 15, of Township 55 North, Range 27 West of the fourth principal meridian, if extended west would intersect the same; thence east on said extended section line to section corner between Sections 11, 12, 13 and 14; thence north on the section line between Sections 11 and 12, and 1 and 2, all of the same township and range above mentioned; to the township line between Townships 55 and 56 North; thence continuing north on the section line between Sections 35 and 36, and 26 and 25 to the northeast corner of Section 26, Township 56 North, Range 27 West; thence west on the section line between Sections 26 and 23, and 27 and 22 to the High-Water Mark on the easterly shore of Big White Oak Lake; thence westerly along the High-Water Mark on the north shore of Big White Oak Lake to a point north of a point on the Mississippi River, opposite the mouth of the Wanoman River (Vermillion River in Cass County), as laid down on Sewell's map of Minnesota; thence south to the point of beginning.

Definitions:

High-Water Mark is the line which the water impresses on the soil by covering it for sufficient periods of time to deprive it of vegetation.

F. "The State" means the State of Minnesota.

G. "The Legislature" means the legislature of the State of Minnesota.

H. "DNR" means the Department of Natural Resources of the State of Minnesota.

I. "Commissioner" means the Commissioner of the Department of Natural Resources of the State of Minnesota.

J. "Additional sum" means the amount added to the total charge imposed by the State for the privilege of hunting, fishing and trapping within the Reservation.

K. "Unrestricted License" means a hunting, fishing or trapping license or permit valid within the boundaries of the Leech Lake Reservation pursuant to this Agreement for which an additional sum has been charged.

L. "Restricted License" means a hunting, fishing or trapping license or permit issued by the State of Minnesota and valid throughout the State of Minnesota, except within the boundaries of the Leech Lake Reservation or other Indian country, for which no additional sum has been charged.

M. "Separate License Stamp" means a stamp which, when affixed to the Restricted License, is the equivalent of an Unrestricted License and for which an additional sum has been charged.

N. "The Code" means the Conservation Code of the Leech Lake Band of Chippewa Indians affixed hereto as Exhibit B.

O. "Non-game" fish means the fish species called buffalofish, burbot, bullhead, carp, catfish, coho, dogfish, gar, quillback, sheephead, suckerfish, tulibee and whitefish and any other species which may be added by agreement of the parties.

P. "Confiscated game" means all fish, game and wild rice taken into custody by the DNR because of violation of the state game, fish and wild rice laws.

Q. "Ricing" means the harvesting of wild rice.

R. "Persons entitled to harvest wild rice" means those persons defined in Minnesota Statutes 1971 §84.10.

S. "Taking for commercial purposes" means the taking of fish or game for barter or sale.

T. "Fishing" shall mean angling, spearing, netting and erection of fish houses for the purposes of angling, netting or spearing.

U. "Fish station" shall mean a facility maintained and operated for the purpose of capturing fish, stripping and retaining the fish eggs and returning the fish to the waters.

II.

Conditions

A. All agreements herein recited are expressly conditioned upon the adoption by the Legislature, at the 1973 session thereof, of legislation to be sumbitted by the Governor to effectuate the terms of this Agreement.

B. No part of this Agreement is severable.

C. In the event the legislation is not enacted by the Legislature at its 1973 session, any party hereto may renew, without prejudice, its appeal of the above referenced civil actions pending before the above referenced court, as provided by the Amended Order of the United States Court of Appeals for the Eighth Circuit dated July 24, 1972.

D. In the event the legislation is enacted into law, all the parties hereto agree that their appeals of the above referenced civil actions pending before the above referenced court will be dismissed with prejudice and all parties will apply to the Court for entry of a consent decree consistent with the terms of this Agreement and the legislation enacted pursuant hereto.

III.

Term

This Agreement shall be binding upon the parties so long as there continues to be a Reservation and/or tribal and Band hunting, fishing and ricing rights, recognition that termination of the Reservation and/or tribal and Band hunting, fishing and ricing rights may only be accomplished by action of the United States Congress expressly stating that the Reservation and/or all hunting, fishing and ricing rights of the tribe or Band are terminated.

IV.

Agreements

The parties hereto agree as follows:

A. The Band will adopt and uniformly and fairly enforce the Code upon all of its members and tribal members duly licensed pursuant to the Code. The Code shall not be modified, amended or altered except by agreement of each of the parties hereto or as provided therein, and in no event shall the Band or Tribe permit the commercial taking or sale of game fish or game. All Band and licensed tribal members shall be exempt from state law governing hunting, fishing, trapping or ricing while within the Reservation, except for the offense of trespass relating to privately owned land which has been posted pursuant to Minnesota Statutes 1971 §100.29(21), and in lieu thereof shall be subject to the Code. All Band and licensed tribal members shall be exempt from State law

governing the possession and transportation anywhere within the State of game, game fish, non-game fish and wild rice which has been taken within the Reservation.

B. The State shall enact legislation to establish the following:

1. Licensing System

a. From and after 60 days after the enactment of the legislation referred in Article II hereof, all persons required to hold a hunting, fishing or trapping license or permit in order to exercise the privilege of hunting, fishing or trapping within the State of Minnesota shall be required to pay an additional sum over and above the amount otherwise assessed by the State of Minnesota for said license or permit (including surcharges) for the privilege of hunting, fishing or trapping within the boundaries of the Reservation. Said additional sum shall be an amount established annually by the RBC, which amount shall not exceed fifty per cent (50%) of the State resident license fee (including any surcharges) then in effect for the purchase of hunting, fishing or trapping licenses.

b. The additional sum shall be collected by the DNR in the following manner:

(i) The DNR shall offer for sale through all agencies then selling hunting, fishing and trapping licenses, as the State's primary license, an Unrestricted License as defined in Article I(K) hereof, except that in the year of enactment of the legislation, the Commissioner in his discretion need not sell an Unrestricted License.

(ii) It is understood and agreed that the State and/or the DNR will continue to sell a Restricted License as defined in Article I(L), and may in the future enter into agreements covering other Indian country and special licensing arrangements for said Indian country.

(iii) The DNR shall offer for sale, in addition to the Unrestricted License, a Separate License Stamp as defined in Article I(M). The amount charged for the Separate License Stamp need not be the same as the additional sum included in the Unrestricted License fee; however, the cost of the Separate License Stamp shall not exceed fifty per cent of the state resident license fee (including any surcharge) then in effect for the license in question.

(iv) The RBC shall inform the Commissioner no later than 30 days after it receives notice from the Commissioner of the State's license fee schedule each year of the Band's determination of the amount to be added for the Unrestricted License and the amount to be charged for the Separate License Stamp for the year in question. In the event the RBC fails to timely inform the Commissioner of the additional sum, then the previous year's additional sum shall be charged. The sum to be added to the Unrestricted License for the year 197.... shall be $1.00; the sum to be charged for the Separate License Stamp for fishing licenses and small game licenses for the year 1973 shall be $100; in all other cases the charge for the Separate License Stamp shall be $2.00, except in those cases where the stamp for the Restricted License is less than

$4.00, in which case the Separate License Stamp shall be 50% of the Restricted License fee.

c. The additional sums collected from sales of Unrestricted Licenses and Separate License Stamps shall be remitted to the RBC at least quarterly. The State may, however, deduct from the receipts the added administrative cost and sales commission incurred by it in connection with the sale of said Unrestricted Licenses and Separate License Stamps which it would not otherwise incur but for the existence of the unrestricted license system. The State may pay the same percentage of sales commission to the Vendor of the Unrestricted License and Separate License Stamp it pays for the sale of Restricted Licenses. The books and records of the State with respect to license sales, amounts collected and costs of administering and selling shall at all times be open to inspection by any duly authorized representative of the signatory parties hereto. Any disputes with respect to the sale and administrative costs shall be subject to arbitration as hereinafter provided.

d. The holder of a Restricted License, an Unrestricted License or a Separate License Stamp, who is not a Band or Tribal member duly licensed pursuant to the Code, will at all times remain subject to the laws, regulations, rules and ordinances of the State of Minnesota and its political subdivisions with respect to hunting, fishing and trapping and all other restrictions presently enacted or hereinafter enacted, including specifically but not limits and methods of taking. The purchase of the Unrestricted License and/or the

Separate License Stamp shall confer no exemption upon the holder thereof from any law or regulation governing hunting, fishing or trapping. The existence of the Unrestricted License system shall impose no duty upon the State or the DNR to establish seasons, limits or methods of taking for the Reservation which in any way differ from the seasons, limits or methods of taking established for other areas within the State.

e. It is expressly understood and agreed that in the event the Code is not uniformly and fairly enforced by the Band, the State may withhold all receipts due the Band until such time as fair enforcement is resumed. The State shall give prompt notice of its intent to withhold funds because of unfair enforcement by the Band. Upon receipt of said notice, the Band may request a hearing in ten days before the arbitrators, who thereafter, and upon the evidence and in the manner provided in Article VI hereof, shall decide if there has been a breach of the Band's duty to enforce the Code and the period of time during which said breach has continued.

In the event that it is determined by the arbitrators that there has not been uniform and fair enforcement of the Code, so much of the sums held by the State and collected during the period in which there has not been uniform and fair enforcement shall be forfeited by the Band.

2. Wild Ricing Regulation

a. From and after the effective date of the legislation provided for in Article II hereof, the regulation and licensing of wild rice harvesting

by Band and Tribal members within the Reservation shall be vested in the RBC.

b. The RBC shall ..... and shall ..... to the Commissioner for adoption appropriate regulations to control:

(i) Methods of harvesting,

(ii) Seasons of harvesting,

(iii) The number of persons permitted to harvest, by requiring the issuance of Band permits to all persons entitled to harvest wild rice, whether or not Band or Tribal members.

(iv) The lakes and rivers or portions of lakes and rivers open to ricing, and

(v) Licensing of buyers.

The Commissioner shall promulgate regulations consistent with the regulations adopted and recommended by the RBC for the purpose of regulating and licensing persons entitled to harvest wild rice within the Reservation, save and except that no regulation, limitation or license fee recommended by the Band may be adopted or imposed which will discriminate against or among those otherwise entitled to harvest wild rice or buy the same within the Reservation.

c. All persons entitled to harvest wild rice within the Reservation shall provide appropriate identification to the RBC or its agents when obtaining a Band permit to harvest wild rice. Said permit shall be carried upon the person and displayed to authorized conservation officers of the Band and/or the State upon reasonable request while engaged in harvesting.

d. All persons other than Band or duly licensed Tribal members shall be required to have a State ricing license, in addition to a Band permit. No additional sum shall be added to the State ricing license, and in lieu thereof, the Band may charge a fee for a Band permit. The fee for the Band permit shall be the same as that charge to Band members.

3. Non-Game Fish Taking

a. From and after the effective date of the legislation provided for in Article II hereof, the taking of non-game fish from the waters within the Reservation for commercial purposes shall be the exclusive right of the Band.

b. Non-game fish may be taken for non-commercial purposes at times, by methods and in amounts prescribed by the Commissioner or by State law by any person otherwise entitled to fish within the Reservation. The Commissioner agrees to promulgate a regulation limiting netting of non-game fish to residents of the State and further limit the number of whitefish taken within the Reservation to 25 such fish in the possession of any resident at any time.

c. The DNR retains the right to remove non-game fish from the waters of the Reservation in the event that, in the opinion of the Commissioner, the Band does not take sufficient quantities of said fish to maintain proper ecological balance within the waters. Prior to taking any action to remove non-game fish, the Commissioner shall notify the Band of the amount of non-game fish he desires to have removed and allow the

Band a reasonable opportunity to remove said non-game fish.

4. Minnows and Other Baits

a. From and after the effective date of the legislation provided for in Article II hereof, the taking of minnows and other bait from the waters within the Reservation for commercial purposes shall be the exclusive right of the Band, save and except that resort owners or bait dealers whose resorts or bait shops are within the Reservation boundaries may take minnows for resale at retail at their resorts or bait shops within the boundaries of the Reservation.

Bait dealers or resort owners authorized to take minnows within the Reservation shall have added to the State license for such taking an additional sum equal to 50% of the State license fee, which additional sum shall be remitted to the Band in the same manner as provided in Article IV hereof.

b. The sale of minnows and other baits from whatever source shall remain unrestricted within the Reservation.

5. Confiscated Game and Fish

From and after the effective date of the legislation provided for in Article II hereof, confiscated game (not including furs, pelts, hides or skins), fish and wild rice taken into custody by the DNR within the Reservation or within a reasonable distance from the Reservation boundaries and all game or fish injured or killed in connection with conservation activities of the DNR within the

Reservation shall be offered without cost or other charge to the RBC for consumption and use by Band members. The state shall have no duty to transport said confiscated game, fish or wild rice.

6. Fry

The State shall place in the lakes of the Reservation annually, in the form of fry, a minimum of 10% of the green eggs taken at fish stations in the waters of the Reservation or in waters adjacent to the Reservation. The minimum percentage may be raised by mutual consent of the parties. In the event a dispute arises over raising the minimum percentage, the matter shall be submitted to arbitration.

7. Posting

The State shall post the boundaries of the Reservation by placing appropriate signs on all public roads leading into the Reservation at or near the boundaries of the Reservation. The sign shall contain a notice indicating that special licenses are required for hunting, fishing, trapping and ricing within the boundaries of the Reservation and shall further indicate the penalties for destruction of the signs.

V.

Enforcement

A. Duly constituted and properly identified conservation officers of the DNR will be granted powers of arrest for offenses committed in their presence under the Code, it being understood and agreed that the aforesaid conservation officers shall arrest Band members for violations

of the Code only and may initiate such proceeding under the Code for violations as are provided for therein.

B. Duly constituted and properly identified Band conservation officers shall be granted powers of arrest for violation of state game and fish laws committed in their presence, it being understood and agreed that the aforesaid conservation officers may initiate such proceedings for violation of state law as are provided by statute.

VI.

Arbitration

A. Any dispute or disagreement between the parties, including specifically but not exclusively:

1. Fair Enforcement of the Code,
2. Modifications of the Code as provided therein,
3. Game or fish management,
4. Protection of endangered species, and
5. Administration and sale of licenses,

shall be settled by arbitration at the request of any party hereto.

In any such arbitration, the State shall be considered as one party, and the Band, the United States and the Minnesota Chippewa Tribe shall be the other party, although the Band, the United States and the Minnesota Chippewa Tribe need not act unanimously in any matter other than selection of the arbitrators, and each may demand arbitration of any dispute with the State pursuant to this section without the consent of the others. The party desiring to initiate arbitration shall serve on the other party, by certified mail (return receipt requested) a written demand

for arbitration setting forth (a) the nature of the dispute to be resolved, (b) the claim of the party initiating arbitration with respect to such dispute, and (c) the name and address of one arbitrator selected by the party initiating arbitration. The other party shall have ten days after receipt of such demand to select a second arbitrator. If no second arbitrator is selected within such ten-day period, then the sole arbitrator shall be the one selected by the party initiating arbitration. If within such ten-day period the party receiving the demand for arbitration selects a second arbitrator by giving written notice of the arbitrator's name and address to the party initiating arbitration and to the first arbitrator by certified mail, then the two arbitrators so selected shall choose a third arbitrator within ten days after the ..... by the first arbitrator of notice of the selection of the second arbitrator. If the first two arbitrators fail to choose a third arbitrator within the prescribed ten-day period, then either party to the arbitration, on notice to the other, may apply to the Chief Judge of the United States District Court for the District of Minnesota for the appointment of a third arbitrator.

B. As promptly as practicable after their appointment, the arbitrators shall hold a preliminary meeting with the parties to determine the most expeditious method of assembling all pertinent evidence. The arbitrators, in their discretion, may require the parties to appear for depositions and produce documents, answer interrogatories and make admissions in accordance with the discovery procedure specified in the Federal Rules of Civil Procedure. Should any party fail to comply with any procedural order or requirement of the arbitrators, such failure may be given such weight as the arbitrators deem appropriate in the determination of the issue presented for arbitration.

C. After presentation of the evidence, the matters in dispute shall be arbitrated by the three arbitrators so chosen, and the award of the arbitrators, or a majority of them, shall be final, and judgment upon the award rendered may be entered in the United States District Court for the District of Minnesota. The arbitrators may include in their award a determination of responsibility for the expenses of arbitration. Prior to the making of the award by the arbitrators, none of the parties to this Agreement shall (except as specifically authorized herein) commence any lawsuit or other proceeding against any other party hereto, if such lawsuit or proceeding arises out of any dispute or disagreement between the parties relating to the matters set forth in this Agreement. When an award has been made by the arbitrators hereunder, all parties hereto consent to the personam jurisdiction of the United States District Court for the District of Minnesota for the entry of judgment thereon, and consent to be served with process by certified mail in any proceeding in such Court for the entry of such judgment.

VII.

Assignment

A. All rights, duties and privileges recognized or granted hereunder are exclusively the property of the Band pursuant to the ..... and assignment from the Minnesota Chippewa Tribe and not of any individual member thereof.

B. This Agreement is nonassignable. None of the rights, duties and privileges recognized or granted herein may be assigned or delegated by the Band to other than its administrative and judicial agencies, save and except that the Band may permit hunting, fishing, trapping and ricing by tribal members pursuant to the Code.

VIII.

Severability

No portion of this Agreement or the legislation enacted pursuant thereto shall be severable except by mutual consent then given by all the signatory parties hereto.

In the event that this Agreement or any portion of this Agreement or any portion of the legislation enacted pursuant to this Agreement is held void, illegal or unconstitutional by the Supreme Court of the State of Minnesota or by any Federal Court of competent and final jurisdiction, then in that event, this Agreement and all legislation enacted pursuant to this Agreement shall be deemed to have terminated, and any party hereto may apply to the United States District Court for the District of Minnesota for a new appealable judgment consistent with the judgment entered by said Court on January 25, 1972 in the cases referred to above.

United States of America,
and
Minnesota Chippewa Tribe
By /s/ Robert G. Renner
Robert G. Renner,
U.S. Attorney

Leech Lake Band of
Chippewa Indians
By /s/ David Munnell
David Munnell, Chairman
By /s/ Simon Howard
Simon Howard, Secretary

State of Minnesota
By /s/ Wendell Anderson
Wendell Anderson,
Governor

Department of Natural
Resources of the State
of Minnesota
By /s/ Robert L. Herbst
Robert L. Herbst,
Commissioner

APPENDIX D

ACT OF DECEMBER 19, 1854

CHAP. VII.—*An Act to provide for the extinguishment of the title of the Chippewa Indians to the Lands owned and claimed by them in the Territory of Minnesota, and State of Wisconsin, and for their Domestication and Civilization.*

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the President be, and he is hereby, authorized to cause negotiations to be entered into with the Chippewa Indians, for the extinguishment of their title to all the lands owned and claimed by them in the Territory of Minnesota and State of Wisconsin, which treaties shall contain the following provisions, and such others as may be requisite and proper to carry the same into effect:—

First. Granting to each head of a family, in fee simple, a reservation of eighty acres of land, to be selected in the territory ceded, so soon as surveys shall be completed, by those entitled, which said reservations shall be patented by the President of the United States, and the patent therefor shall expressly declare that the said lands shall not be alienated or leased by the reservees, or their heirs and legal representatives, until otherwise ordered by Congress, and no change of location shall be made without the assent of the President of the United States.

Second. The annuities to which said Indians are entitled, under existing treaties, with the consent of said Indians, together with such as may be allowed them for the cession or cessions, under the provisions of this act,

shall be equally distributed and paid them at their villages, or settlements, within the limits of the ceded territory; but the President shall be invested with power to cause said annuities to be commuted, from time, for such articles of goods, provisions, stock, cattle, implements of agriculture, the clearing and fencing of land, and the erection of buildings and other improvements, as, in his discretion, will conduce most to promote their comfort, civilization, and permanent welfare.

Third. All the benefits and privileges granted to said Indians shall be extended to and enjoyed by the mixed bloods belonging to or connected with the tribe, and who shall permanently reside on the ceded lands.

Fourth. The laws of the United States and the Territory of Minnesota shall be extended over the Chippewa territory in Minnesota whenever the same may be ceded, and the same shall cease to be "Indian country," except that the lands reserved to said Indians, or other property owned by them, shall be exempt from taxation and execution; and that the act passed thirtieth June, eighteen hundred and thirty-four, "to regulate trade and intercourse with the Indian tribes," etc., be inoperative over the said ceded territory, except the twentieth section, which prohibits the introduction and sale of spirituous liquors to Indians.

Fifth. The President shall have power to prescribe and enforce such rules and regulations, not inconsistent with the foregoing provisions, as he may deem necessary for the effectual execution of the purposes of this act, which said rules and regulations shall be annually reported to Congress.

SEC. 2. *And be it further enacted,* That, for the purpose of defraying the expenses of said negotiations, the

sum of ten thousand dollars be, and the same is hereby, appropriated out of any money in the treasury not otherwise appropriated.

APPROVED, December 19, 1854.